



U.S. Department of Justice

Immigration and Naturalization Service

HI

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FEB 2 2001

File: [Redacted] Office: SALT LAKE CITY, UTAH

Date:

IN RE: Applicant: [Redacted]

Application: Application for Waiver of Grounds of Inadmissibility under
Section 212(h) of the Immigration and Nationality Act, 8
U.S.C. 1182(h)

IN BEHALF OF APPLICANT:



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identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Salt Lake City, Utah, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under § 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II), for having been convicted of violating a law relating to a controlled substance, and under § 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a United States citizen and seeks a waiver of inadmissibility under § 212(h) of the Act, 8 U.S.C. 1182(h), to reside with his spouse in the United States.

The officer in charge concluded that the applicant's offenses render him ineligible for a waiver of inadmissibility and denied the application accordingly.

On appeal, counsel argues that the decision of the officer in charge should be reversed for abuse of discretion because it ignored precedent decisions and evidence presented by the applicant in support of his request. Counsel also states that in the event the Associate Commissioner does not summarily reverse the officer in charge's decision, (s)he should conduct a de novo review of the record and determine whether the applicant has presented sufficient evidence in support of his request for a waiver of inadmissibility.

The record reflects that the applicant was convicted on December 30, 1990 for possession of a controlled substance (PCP) and for being under the influence of said controlled substance. In addition, the applicant was convicted on July 17, 1992 of carrying a concealed weapon.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.- Except as provided in clause (ii), an alien convicted of, or who admits having committed, or who admits committing such acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense or an attempt or conspiracy to commit such a crime), or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802), is inadmissible.

Section 212(h) WAIVER OF SUBSECTION (a) (2) (A) (i) (I), (B), (D), AND (E).-The Attorney General may, in his discretion, waive the application of subparagraphs (A) (i) (I), ... of subsection (a) (2) and subparagraph (A) (i) (II) of such subsection **insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana** if-

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated

felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

The record is clear. The applicant is ineligible for admission to the United States under § 212(a)(2)(A)(II) of the Act, and no exception is available for such ground of inadmissibility except for a single offense of simple possession of 30 grams or less of marijuana. Because the applicant's conviction of a controlled substance involves other than a single offense of simple possession of 30 grams or less of marijuana, he is statutorily ineligible for a waiver. Since this conviction renders him ineligible for admission and ineligible for a waiver of inadmissibility, there is no need to consider the merits of a waiver of his inadmissibility under the ground listed in § 212(a)(2)(A)(i)(I) of the Act, or whether a favorable exercise of the Attorney General's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h), the burden of establishing eligibility remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.