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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

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



FILE  Office: MONTREAL, CANADA

Date: APR 10 2003

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:  
SELF-REPRESENTED

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

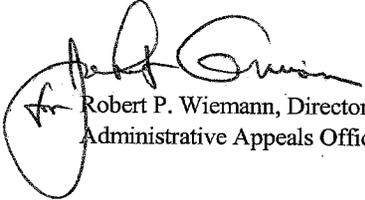
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Port Director, Montreal, Canada, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who resides in the province of Ontario, Canada. The applicant is married to a United States (U.S.) citizen and based on this relationship, the applicant applied for an immigrant visa at the U.S. Consulate in Montreal, Canada on May 31, 2002. The applicant was found to be inadmissible pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act) for having been arrested and convicted of crimes relating to controlled substances and crimes involving moral turpitude. The applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to move to the United States with his U.S. citizen spouse.

The port director concluded the applicant was statutorily ineligible for a waiver of the grounds of inadmissibility, and denied his application accordingly.

The port director stated that the applicant was ineligible for a visa under section 212(a)(2)(A)(i)(I) of the Act because he was arrested and convicted of the following crimes involving moral turpitude:

- (1) On or about November 4, 1969, the applicant was found guilty of two charges of theft over \$50.
- (2) On or about September 29, 1969, the applicant was found guilty of one charge of theft under \$50.
- (3) On or about July 8, 1970, the applicant was found guilty of two charges of possession of stolen property.
- (4) On or about March 15, 1973, the applicant was found guilty of one charge of possession of stolen property.

See Port Director Decision, dated August 2, 2002. Furthermore, the port director stated that the applicant was ineligible for an immigrant visa under section 212(a)(2)(A)(i)(II) of the Act, in that:

- (1) On or about April 23, 1975, the applicant was found guilty of the charge of possession of a narcotic. According to information contained in the applicant's file, this conviction involved three ounces, or approximately 85 grams, of marijuana.
- (2) On or about June 9, 1976, the applicant was

found guilty of the charge of possession of a narcotic. According to information contained in the applicant's record, this conviction involved cannabis resin.

*Id.* The port director concluded that:

Based on the fact that the applicant was convicted on two different occasions for violating the laws in Canada relating to controlled substances, and based on the fact that his first conviction involved an amount exceeding thirty grams of marijuana, the applicant is statutorily ineligible for a waiver of his inadmissibility.

*Id.*

On appeal, the applicant, through his wife, asserts that he received a pardon from the Canadian government for all of the convictions discussed in the port director's decision, and that as such, they should not be considered or used as a basis of inadmissibility. The applicant additionally asserts that he possessed less than 85 grams of marijuana in 1975, and that favorable discretion should be exercised in his case because his arrests and convictions occurred more than 27 years ago. The applicant also argues that despite his past record, the Immigration and Naturalization Service (now known as the Bureau of Citizenship and Immigration Services) granted his application for advance permission to enter as a nonimmigrant in 1998, thus demonstrating that he is not considered a threat to the national welfare, safety or security of the U.S. Lastly, the applicant asserts that his U.S. citizen wife will suffer extreme hardship if he is not allowed to enter the United States. The applicant submitted a copy of a pardon by the Canadian Government National Parole Board indicating that on March 5, 1993, all of the applicant's crimes were pardoned and his convictions vacated. The applicant additionally submitted numerous letters from his wife [REDACTED] family and friends regarding the extreme hardship that [REDACTED] would suffer if the applicant were not allowed to immigrate to the United States.

Section 212(a)(2)(A)(i) of the Act states:

(2) Criminal and related grounds. -

(A) Conviction of certain crimes. -

(i) In general. - Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing 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 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 Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or 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 . . . .* (emphasis added.)

As indicated above, a section 212(h) waiver of grounds of inadmissibility is generally not available in cases involving controlled substance crimes. Indeed, the Act makes it very clear that a section 212(h) waiver applies only to cases involving a single offense of possession of 30 grams or less of marijuana. In this case, the applicant was convicted of *two* controlled substance crimes. Thus, as was correctly pointed out in the port director's decision, the applicant is statutorily ineligible to be considered for a section 212(h) waiver. Moreover, because the applicant was convicted of more than one possession of a controlled substance offense, the exact amount of marijuana that the applicant possessed in 1975 need not be addressed.

The fact that the applicant's crimes were pardoned and vacated by the Canadian government does not alleviate their effect for U.S. immigration purposes. "For purposes of U.S. immigration laws, a foreign pardon, in itself, does not wipe out an alien's foreign conviction or relieve him from the disabilities which flow therefrom." *Marino v. INS*, 537 F.2d 686, 691 (2<sup>nd</sup> Cir. 1976) (citations omitted); see also, *Mercer v. Lence*, 96 F.2d 122 (10<sup>th</sup> Cir. 1938); *United States ex rel. Palermo v. Smith*, 17 F.2d 534 (2<sup>nd</sup> Cir. 1927). Moreover, even within the United States, no effect is given in immigration proceedings to a state action which purports to vacate or otherwise remove a conviction or record of guilt. See *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his U.S. citizen wife or whether he merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

**ORDER:** The appeal is dismissed.

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