

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

HS



FILE:



Office: LOS ANGELES, CALIFORNIA

JUN 16 2004
Date:

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

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. He was found to be inadmissible to the United States pursuant to section 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 for the offense of possession of a controlled substance (cocaine). The applicant is the beneficiary of an approved petition for alien relative filed by his U.S. citizen spouse. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) in order to remain in the United States to reside with his U.S. citizen spouse and children.

The Interim District Director determined that the applicant is not eligible for any relief or benefit from this application and denied the application accordingly. *See Interim District Director's Decision* dated July 21, 2003.

Section 212(a)(2) of the Act states in pertinent part, that:

(A)(i) [A]ny 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 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 Substances Act (21 U.S.C. 802)), is inadmissible.

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

(h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D) and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relate 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 alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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

(1) (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 [Secretary] 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

To recapitulate the record reflects that on October 21, 1994, in the Superior Court of California, County of Los Angeles, State of California, the applicant was convicted of the crime of Possession of a Controlled Substance, to wit cocaine, in violation of the California Health and Safety Code section 11350(a), a felony. On November 9, 1994, the applicant was sentenced to three years probation and 90 days imprisonment. The applicant is, therefore, inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act.

As stated above there is no waiver available to an alien found inadmissible under this section of the Act except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception.

On appeal the applicant states that he needs to stay with his spouse and children in the United States and does not want to be separated from his children. In addition the applicant states that he was released from jail, the jury determined that he was not guilty and the case was closed. No documentation was provided to the AAO indicating that a court nullified or vacated the applicant's conviction.

The record of proceedings reflects that the applicant in the present case was convicted in the State of California for possession of cocaine.

Notwithstanding the arguments on appeal, section 212(a)(2)(A)(i)(II) of the Act is very specific and applicable. In the present case the applicant is subject to the provision of section 212(a)(2)(A)(i)(II) of the Act and he is not eligible for any relief under this Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.