



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: Los Angeles, CA

Date:

IN RE:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who entered the United States in 1978. The applicant was found to be inadmissible to the United States under 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 of a crime involving a controlled substance.

The applicant filed an Application to Waive Inadmissibility Grounds with the Service on July 14, 2000 in conjunction with an Application for Adjustment of Status as the unmarried son of a permanent resident alien. The applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his spouse.

The district director concluded that the applicant was statutorily ineligible for a waiver of inadmissibility and denied his application accordingly.

On appeal, the applicant stated that he made mistakes when he was younger, but that he has been a responsible person for many years. The applicant requested that his petition be approved because he is married to a United States citizen and is a changed man.

The record reflects that the applicant was convicted on August 15, 1986 of a violation of section 11550 (a) of the California Health & Safety Code for possession of a narcotic controlled substance, to wit, opiate, and that he was sentenced to serve 90 days in Orange County Jail. On January 12, 1987, the applicant was again convicted of a violation of section 11550 of the California Health & Safety Code for the possession of a narcotic controlled substance, to wit, opiate, and that he was sentenced to serve 90 days in Orange Country Jail. The Applicant is therefore inadmissible under section 212(a)(2)(A)(i)(II) of the Act .

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

(1) 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.)

The Applicant applied for a waiver of inadmissibility under section 212(h) of the Act. The record indicates that the applicant was convicted of possession of a narcotic controlled substance, to wit, opiate. The Act clearly provides that the section 212(h) waiver applies only to controlled substance cases that involve a single offense of possession of 30 grams or less of marijuana. In this case, the applicant was convicted of possessing opiate, not marijuana. Thus, the district director correctly concluded that the applicant is statutorily ineligible to be considered for a section 212(h) waiver.

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 other qualifying relative, 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.