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**U.S. Citizenship
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FILE:



Office: LOS ANGELES, CA

Date: APR 01 2005

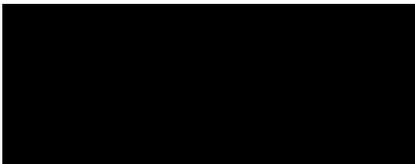
IN RE:



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:



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 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 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 violation of law relating to a controlled substance. The applicant is the spouse of a naturalized citizen of the United States and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse.

The district director concluded that the applicant was ineligible for a waiver under section 212(h) of the Act because he was convicted of a drug offense that does not meet the statutory definition of an offense that the Attorney General [now Secretary of Homeland Security] has discretion to waive. *Decision of the District Director*, dated November 5, 2003.

On appeal, counsel states that the appeal is based on extreme hardship and indicates that the applicant pleaded guilty before enactment of AEDPA. *Form I-290B*, dated December 1, 2003. The AAO notes that counsel requested 30 days after filing the appeal to submit a brief and/or evidence to the AAO. Over one year has elapsed since the filing of the appeal and no additional documentation has been received into the record. The appeal will therefore be decided based on the record as it currently stands.

The record reflects that on July 12, 1985, the applicant was convicted of Under the Influence of a Controlled Substance in the Los Angeles Superior Court of California. The applicant was sentenced to 90 days in jail.

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

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

....

(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:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of ... subparagraph (A)(i)(II) of [subsection (a)(2)] insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if -

....

(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 . . .

The Form I-290B submitted by counsel appears to assert that the applicant is eligible for consideration of a waiver pursuant to section 212(h) of the Act. In the absence of substantiating documentation, however, the assertions of counsel are cryptic and unpersuasive and fail to form the basis for a finding of eligibility and/or approval of the application.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.