

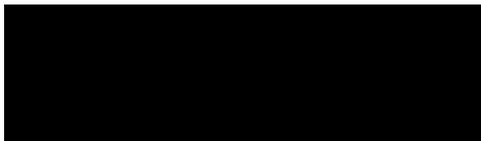
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES DISTRICT OFFICE

Date: JAN 28 2005

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act (INA), 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles. The matter 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 Guatemala. The applicant was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II). The record reflects that the applicant is the spouse of a U.S. citizen and father of three U.S. citizen children. He seeks a waiver of inadmissibility to remain in the United States with his family and adjust status to that of a lawful permanent resident pursuant to INA § 245, 8 U.S.C. § 1255, as the beneficiary of an immediate relative petition filed on his behalf by his wife.

The district director found that the applicant was statutorily ineligible for a waiver of inadmissibility in that he was convicted of selling or furnishing marijuana or hashish, a drug offense that the Secretary of Homeland Security lacks the statutory authority to waive for purposes of admissibility. The application was denied accordingly.

On appeal, counsel contends that the applicant pled guilty to the offense at issue as a result of an inadequate advisal with respect to the immigration consequences. Specifically, counsel states that the advisal was given only in English and the applicant speaks only Spanish. Counsel also states that a motion is pending to set aside the conviction for that reason. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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 elements of—

...
(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.

The question on appeal is whether the applicant qualifies for a waiver of inadmissibility under INA § 212(h), 8 U.S.C. § 1182(h), which provides, in pertinent part:

(h) The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in his discretion, waive the application of . . . 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— . . .

8 U.S.C. § 1182(h). The record reflects that the applicant was convicted of sale or furnishing a controlled, not simple possession. This fact is uncontested on the record. Although counsel asserts that a *Writ of Coram Nobis* has been filed, there is no evidence of any such motion having been filed or any proceedings on such a motion. Furthermore, the AAO notes that the court records on file specifically refute counsel’s contentions

that the applicant entered a guilty plea without having heard the immigration and other plea advisals in Spanish. *Records of the Municipal Court of Los Angeles-Van Nuys Judicial District for People of the State of California v. Rocael Eddie Camargo, No. LA009759* (indicating assistance of Spanish interpreter during plea advisals during proceedings on January 31, 1992). In any event, the conviction stands and has not been set aside, and therefore forms a proper basis for the Director's determination of inadmissibility and statutory ineligibility for a waiver therefor.

The AAO therefore finds that the applicant is statutorily ineligible for a waiver of inadmissibility under INA § 212(h), 8 U.S.C. § 1186(h). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.