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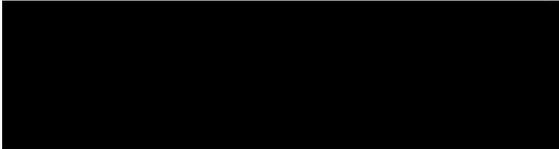


U.S. Citizenship  
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NOV 16 2009



FILE:



Office: PHOENIX, AZ

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:



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, Phoenix, AZ, 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 was found to be inadmissible to the United States pursuant to section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i).

The district director concluded that there is no waiver for this ground of inadmissibility. *Decision of District Director*, dated August 28, 2003.

On appeal, the applicant asserts that the district director erred in finding him inadmissible under section 212(a)(2)(C) of the Act and that while the District Director may find him inadmissible under section 212(a)(2)(A)(i)(II) of the Act, the applicant would be qualified for a waiver under section 212(h) of the Act. *Form I-290B*, filed September 26, 2003.

In support of these assertions, the applicant submits a brief. *Brief in Support of Appeal*, dated September 24, 2003. The record also contains character references; police, court and FBI records; a relevant case and the relevant statute. The record also contains the initial I-601 filing which includes a statement from the applicant's U.S. Citizen spouse and a series of support letters. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant plead guilty to possession for the purpose of trafficking under Section Four of the Narcotic Control Act and was convicted on January 6, 1983 to a two year term of probation and a \$200 fine. The applicant entered the United States on May 30, 2003 and filed Forms I-130 and I-485 on July 21, 2003 based on marriage to his U.S. Citizen spouse. He also filed an I-601 waiver concurrently with the aforementioned forms which states that he is inadmissible under section 212(a)(2)(C) of the Act. On August 28, 2003, the I-485 was denied on the basis of a violation of section 212(a)(2)(C) of the Act and that there is no waiver for this ground of inadmissibility.

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

Any alien who the consular officer or the Attorney General knows or has reason to believe

- (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so...is inadmissible.

The applicant makes several arguments in his brief to support his contention that the district director erred in finding him inadmissible pursuant to section 212(a)(2)(C) of the Act. First, the applicant states that he did not commit the acts constituting the offence for which he entered a guilty plea. *Id.* at 5. The applicant plead guilty to unlawfully possessing a narcotic, to wit; Cannabis (marihuana), for the purpose of trafficking contrary to the provisions of the Narcotic Control Act. *British Columbia Court Disposition*, dated January 6,

1982. Section Four of the Narcotic Control Act states, “(1) No person shall traffic in a narcotic or any substance represented and held out by the person to be a narcotic (2) No person shall have in his possession any narcotic for the purpose of trafficking...” The record indicates that the applicant sold marijuana to an undercover police officer. *Brief in Support of Appeal.* at 5-6. The record reflects that Officer Donaghy of the Vancouver Police Department was prepared to testify that he purchased drugs from the applicant. *See Incident Report*, dated September 24, 1982. Therefore, the applicant committed the acts constituting the offence for which he entered a guilty plea. Furthermore, the AAO can only make a decision on the record presented and cannot change his guilty plea and the subsequent deleterious effects.

Second, the applicant contends that although he plead guilty to possession for the purpose of trafficking under Section Four of the Narcotic Control Act, the punishment offered was similar to that of simple possession under Section Three of the Narcotic Control Act. The AAO finds no merit to this argument as it cannot change the crime to which he plead guilty.

Third, the applicant contends that he does not fit the profile of a trafficker. *Brief in Support of Appeal.* at 8. This is an irrelevant and nonsensical contention that has no legal relevance.

Lastly, the applicant asks the district director to look beyond the record at the facts and circumstances of the case even though the guilty plea is a matter of record. *Id.* at 9. The applicant cites *Gerbier v. Holmes*, 280 F.3d 297 (3d Cir. 2002) in support of his case. The court in *Gerbier* refers to a Delaware trafficking statute that does not include an element of trafficking in it and whether a conviction under the statute constitutes a drug trafficking crime, which is an aggravated felony. However, the Narcotic Control Act clearly includes an element of trafficking in it. Section Four of the Narcotic Control Act states, “(1) No person shall traffic in a narcotic or any substance represented and held out by the person to be a narcotic (2) No person shall have in his possession any narcotic for the purpose of trafficking...” Therefore, the applicant has been convicted of a crime rendering him inadmissible under section 212(a)(2)(C) of the Act.

The AAO finds that the applicant is inadmissible under section 212(a)(2)(C) of the Act and that no waiver is available under this section of the Act. Having found that a waiver is inapplicable to this case, no purpose would be served in discussing whether his spouse has established extreme hardship under section 212(h) of the Act. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.