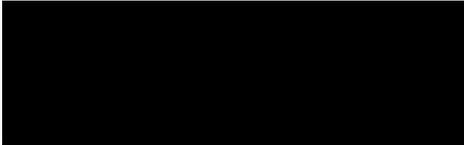


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U.S. Citizenship
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Services

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FILE:



Office: MIAMI, FL

Date: SEP 29 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:

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 District Director, Miami, Florida 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 Ecuador who 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 of a law relating to a controlled substance (possession of cocaine). The AAO notes that the district director incorrectly states that the applicant is a native and citizen of Cuba. The record indicates that the applicant has a U.S. citizen spouse.

The district director found that the applicant is ineligible for a waiver of inadmissibility and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated September 26, 2000.

On appeal, the applicant asserts that the district director made a mistake in his decision. *Letter in Support of Appeal*, dated October 25, 2000.

The record contains, but is not limited to, the aforementioned letter and a record of the applicant's conviction. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(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... is inadmissible.

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

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of 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** if . . .

The record reflects that the applicant was convicted of possession of cocaine, which is a controlled substance violation. *Record of Conviction*, dated March 14, 1995. The applicant contends that his friend possessed the "said drug", he was unaware of this and he did not know that this would go on his record as a conviction for possession of cocaine. *Letter in Support of Appeal*. The AAO can only make a decision based on the record of conviction and is not an appropriate venue for the applicant to contend the merits of his criminal conviction.

The applicant is ineligible for a waiver under section 212(h) of the Act as his controlled substance conviction was not for a single offense of simple possession of 30 grams or less of marijuana. Therefore, the AAO agrees with the decision of the district director.

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. 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.