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U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

[REDACTED]

H7

FILE:

Office: MIAMI, FL

Date: JUN 02 2006

IN RE:

[REDACTED]

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:

[REDACTED]

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, Chief  
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 applicant is a native and citizen of Trinidad 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 purchasing a controlled substance. The applicant is the spouse of a citizen of the United States and the father of a citizen of the United States. 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 and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of District Director*, dated October 14, 2004.

On appeal, counsel states that Citizenship and Immigration Services did not take all of the applicant's circumstances and those of his immediate family members into account in making a decision to deny the waiver application. *Form I-290B*, dated November 15, 2004. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

The record reflects that, on November 20, 1995, the applicant was convicted of Sell/Purchase/MFR/DEL Controlled Substance in the Circuit Court in and for Broward County, Florida. The arrest report indicates that the applicant's offense was the purchase of marijuana.

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

- (2) 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 . . .
      - (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:

- (h) The Attorney General [Secretary of Homeland Security] 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 . . .

The record reflects that the applicant was convicted of a drug offense other than “simple possession of 30 grams or less of marijuana.” The offense for which the applicant was convicted, namely Sell/Purchase/MFR/DEL Controlled Substance is distinct from simple possession as identified in section 212(h) of the Act. The statute enacted by Congress does not provide for a waiver at the Secretary’s discretion for the offense committed by the applicant. The decision of the district director therefore errs in considering the applicant eligible for consideration under section 212(h)(1)(B) of the Act.

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 spouse and child or whether he merits a waiver as a matter of discretion.

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.