

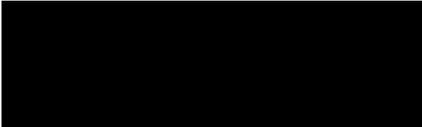
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U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES, CA Date: APR 23 2007

IN RE: Applicant: [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:

SELF-REPRESENTED¹

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, Chief
Administrative Appeals Office

¹ It is noted that the attorney of record in the present matter ([REDACTED]) has been indefinitely suspended from practicing immigration law. See Executive Office for Immigration Review, List of Disciplined Practitioners at <http://www.usdoj.gov/eoir>

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director determined that the applicant had failed to establish that his wife would suffer extreme hardship if he were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601 application) was denied accordingly.

On appeal the applicant asserts that his wife requires medical care and that she will suffer extreme medical hardship if he is unable to attend to her medical needs, or if she must rely on inferior medical care in Jamaica. The applicant concludes that his Form I-601 application should therefore be approved. The applicant does not dispute the district director's finding that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

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

(I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[I]n determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. . . .

The record reflects that on January 29, 1991, the applicant was convicted in the Superior Court of California, County of Los Angeles, of the offense of Sale or Transportation of Marijuana, in violation of section 11360(a) of the California Health and Safety Code. The AAO finds that the offense committed by the applicant constitutes a crime involving moral turpitude.

Although not discussed in the district director's decision, section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), provides in pertinent part that:

Any alien who the . . . Attorney General [now, Secretary, Homeland Security, "Secretary"] knows or has reason to believe-

(i) is or has been an illicit trafficker in any controlled substance . . . or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled . . . substance . . . is inadmissible.

The AAO reviews appeals on a *de novo* basis. An application or petition that fails to comply with the technical requirements of the law may therefore be denied by the AAO even if the district director fails to identify all of the grounds for denial in her decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In the present matter, the applicant was convicted of the offense of Sale or Transportation of Marijuana, a felony, in violation of section 11360(a) of the California Health and Safety Code. The AAO finds that the applicant is thus also inadmissible under section 212(a)(2)(C) of the Act.

Section 212(a)(2)(F) of the Act, 8 U.S.C. § 1182(a)(2)(F) states that a waiver for certain criminal and related grounds of inadmissibility is discussed in section 212(h) of the Act, 8 U.S.C. § 1182(h). Section 212(h) of the Act provides in pertinent part that:

The Attorney General [Secretary] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)

(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

Section 212(h) of the Act thus provides for the possibility of a waiver for a section 212(a)(2)(A)(i)(I) of the Act, crime involving moral turpitude. Section 212(h) of the Act does not, however, provide for the possibility of a waiver for a section 212(a)(2)(C) of the Act, controlled substance trafficking ground of inadmissibility. In the present matter, the applicant is inadmissible under section 212(a)(2)(C) of the Act. Accordingly, he is not eligible to apply for a waiver of inadmissibility under section 212(h) of the Act. The applicant's appeal will therefore be dismissed, and his application denied.

ORDER: The appeal is dismissed. The application is denied.