



U.S. Citizenship  
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FILE:



Office: HARLINGEN, TEXAS

Date:

**AUG 30 2007**

IN RE:



PETITION: 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 PETITIONER:



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, Harlingen, Texas and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 a controlled substance. The applicant is the spouse of a U.S. citizen and the father of three U.S. citizen children, and he now 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 children.

The District Director concluded that the applicant is ineligible for a waiver due to his controlled substance conviction. *Decision of the District Director*, dated September 8, 2005.

On appeal, counsel contends that the applicant has rehabilitated himself and should be admitted to the United States. *Form I-290B*.

In support of his assertions, counsel submits a statement. The record also includes, but is not limited to, a statement from the applicant's spouse; statements from the applicant's children; letters of support from family members and friends; a psychological evaluation of the applicant's spouse; a medical letter for the applicant's spouse; a business plan for the applicant and his spouse; tax statements for the applicant and his spouse; and criminal records for the applicant. The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. On May 6, 2002 the applicant pled guilty to possession with intent to distribute 14.99 kilograms of cocaine. *Judgment, United States District Court, Southern District of Texas*, entered December 5, 2002. The applicant was sentenced to a term of imprisonment of 20 months. *Id.* On April 25, 2003, an immigration judge ordered the applicant removed from the United States. *Order of the Immigration Judge*, dated April 25, 2003.

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

- (i) [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.
  - (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 (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) 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—

(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 . . .

In that the applicant was convicted of possession with intent to distribute 14.99 kilograms of cocaine, he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act and ineligible for waiver consideration under section 212(h). Having found that a waiver is not available to the applicant in the present case, no purpose would be served in determining whether the record establishes that his spouse or children would suffer extreme hardship, as required for waiver approval under section 212(h) of the Act. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.