



U.S. Citizenship  
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[Redacted]

FILE:

[Redacted]

Office: CHICAGO, IL

Date: MAY 24 2007

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant is a native and citizen of Japan 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 moral turpitude and under section 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i), for trafficking in a controlled substance. The applicant is married to a United States citizen and seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her spouse.

The district director concluded that the applicant was statutorily ineligible for a waiver of inadmissibility and denied her application accordingly. *Decision of the District Director*, dated August 26, 2005.

On appeal, counsel asserts that the director improperly determined that the applicant was ineligible for a waiver and that the applicant was not convicted as a controlled substance trafficker. *Form I-290B*, dated September 13, 2005.

The record indicates that on or about December 6, 2001, while in India, the applicant attempted to mail a package containing 17.59 grams of marijuana resin concealed in a cushion to her address in Tokyo, Japan. The package was sent by aircraft and on January 5, 2002 it arrived at the New Tokyo International Airport. The package was then sent to the Post Office where it was inspected by a customs official. *Bill of Indictment*. The Judgment on Record states that the summary of the facts of the offenses committed by the applicant are the same facts as stated on the Bill of Indictment. The court convicted the applicant of: Article 24, Section 1 of Marijuana Control Law; Article 109, Section 3, Subsection 1 of Customs Law; Article 21, Section 1, Subsection 1 of Customs Fixed Rate Law; Article 54, Section 1, First Paragraph, Article 10 and Article 25, Section 1 of Criminal Law; Article 24, Section 5-1 Main Text of Marijuana Control Law; Article 181, Section 1, Main Text of Criminal Suit Law. *Judgment on Record*, dated May 10, 2002.

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

- (1) 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 —
      - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
      - (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(a)(2)(C) of the Act, states in pertinent part:

An 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...

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

The Attorney General 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 AAO finds that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act and section 212(a)(2)(C) of the Act. The record shows that the applicant attempted to mail 17.59 grams of marijuana resin, a more potent form of marijuana. As noted in an opinion from General Counsel:

We note that despite their common origin, cannabis leaves and other cannabis products are distinguishable. Simple possession of some cannabis products is much more serious an offense than simple possession of cannabis leaves. The law recognizes this distinction. For sentencing, 30 grams of cannabis resin is equivalent to 150 grams of marijuana. 18 U.S.C. App. 4 § 2D1.1(Drug Equivalency Table, Schedule I, marijuana).

...  
In adjudicating cases involving forms of the same drug that have different potencies, and that are treated differently for sentencing, it is appropriate for the Service to take note of these distinctions . . . . For purposes of sentencing, for example, 6 grams of cannabis resin is the equivalent of 30 grams of marijuana leaves. 18 U.S.C. App. 4 § 2D1.1 (Drug Equivalency Table, Schedule I, Marijuana) (providing a 1-to-5 ratio for equivalency.).

*General Counsel's Opinion 96-3, Section 212(h) Waiver for Controlled Substance Violations-Forms of Marijuana Other than Marijuana Leaves*, dated April 23, 1996.

The General Counsel's opinion also states:

In most cases, possession of more than 6 grams of cannabis resin would suggest that the alien was a trafficker, and not a mere user. At the very least, possession of larger quantities of a more potent form of marijuana, although less than 30 grams, would tend to cast doubt on whether the alien's act amounts to "simple possession," or in a section 241(a)(2)(B)(i) case, possession for one's own use. If a full examination of the facts of a given case bore out the conclusion that the alien was a trafficker, you could then find the alien subject to exclusion under INA § 212(a)(2)(C), 8 U.S.C. § 1182(a)(2)(C), as well as section 212(a)(2)(A)(i)(II). *Id.*

As noted above, inadmissibility under section 212(a)(2)(A)(i)(II) of the Act may be waived under 212(h) of the Act only as it relates to the simple possession of 30 grams or less of marijuana. In the present case, the applicant attempted to transport 17.59 grams of marijuana resin, the equivalent of 87.95 grams of marijuana leaves, from India to Japan. Accordingly, she is not eligible for the limited waiver available for marijuana possession in section 212(h). Moreover, the facts in the applicant's case lead to the conclusion that the applicant did not mail the marijuana resin for her personal use, as claimed by counsel on appeal. Instead, an examination of the record finds that the applicant was an illicit trafficker in a controlled substance and, therefore, inadmissible to the United States under 212(a)(2)(C) of the Act. No waiver is available for a 212(a)(2)(C) inadmissibility.

The AAO notes counsel's contention on appeal that the applicant's suspended sentence falls under the petty offense exception found in section 212(a)(2)(A)(ii)(II), which states in pertinent part:

Clause (i)(I) shall not apply to an alien who committed only one crime if –

...

- (II) the maximum penalty possible for the crime of which the alien was convicted . . . did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

However, the petty offense exception cited by counsel applies only to crimes of moral turpitude (section 212(a)(2)(A)(i)(I) of the Act), not to crimes involving controlled substances (section 212(a)(2)(A)(i)(II) of the Act). Further, although her sentence was suspended, the applicant was sentenced to two years and six months in prison. Accordingly, the petty offense exception cannot be applied in the present case.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether she has established extreme hardship to her U.S. citizen husband or whether she merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

**ORDER:** The appeal is dismissed.