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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: BALTIMORE, MARYLAND

Date: APR 15 2008

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-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, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Scotland 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 a crime involving a controlled substance in the United Kingdom. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), which the District Director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director, dated September 14, 2006.* The applicant submitted a timely appeal.

In the Form I-290B, Notice of Appeal, the applicant indicated that a separate brief and/or evidence would be submitted to the AAO within 60 days. To date, this office has received no further evidence or brief. As such, the record as constituted is complete.

In the Notice of Appeal, the applicant states that he is eligible to apply for a waiver because his conviction involved a single offense of simple possession of 30 grams or less of marihuana, and his U.S. citizen wife and child would suffer extreme hardship if he were not allowed to remain in the United States.

The AAO will first address the finding of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II).

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

The Attorney General may, in his discretion, waive the application of . . . subparagraph (A)(i)(II) . . . insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if — . . . in the case of an immigrant who is 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 that the alien's denial of admission

would result in extreme hardship to the United States citizen or lawfully permanent resident spouse, parent, son, or daughter of such alien.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The record reflects that in 1989 the applicant was charged with unlawful possession of cannabis resin, a class B controlled drug. It shows that he pled “APPS, BST, CST, G,” and was ordered to “COD 12 months.” An order was made for forfeiture and destruction of the cannabis resin.

The November 6, 2003 letter by the Cumbria Justices Clerk conveys that the acronyms relating to the applicant’s conviction signify the following: BST - bench summary trial i.e. magistrates court; CST - consents to summary trial; COD - conditional order of discharge; G - guilty, APPRS - appears. In the letter, the justices clerk states that he is unable to provide the amount of cannabis involved, but the sentence imposed would reflect that it was not an excessive amount.

In another letter of the same date the justices clerk states that the sentence imposed would reflect that it was not an excessive amount and was a simple possession charge. The justices clerk conveys that the matter was dealt with at the magistrates court (lower court), which indicates that the amount of cannabis involved was a small amount.

The U.K. criminal procedure rules defines a “conditional discharge” as “an order which does not impose any immediate punishment on a person convicted of an offence, subject to the condition that he does not commit an offence in a specified period.”¹

Based on the documentation in the record, the AAO finds that the applicant pled guilty to unlawful possession of cannabis resin. The foreign offense is analogous to a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802). Consequently, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance.

The AAO will now address whether the applicant is eligible to apply for a section 212(h) waiver.

¹ See, http://www.justice.gov.uk/criminal/procrules_fin/contents/frontmatter/glossary.htm

A section 212(h) waiver is generally not available to section 212(a)(2)(A)(i)(II) cases involving controlled substance crimes. However, the section 212(h) waiver applies to a single offense of simple possession of 30 grams or less of marijuana.

In this case, the record reflects that the applicant has a single offense of possession of marijuana. But the letters from the justices clerk do not indicate that the conviction was for 30 grams or less of marijuana. The burden of proof is upon the applicant to establish that he is eligible for a waiver; he has not met that burden. Consequently, the section 212(h) waiver is not available to the applicant.

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.