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

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 08 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:

[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 Director, California Service Center, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Trinidad and Tobago. The director found the applicant to be inadmissible to the United States under section 212(a)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A). The applicant is the beneficiary of an approved Petition for Alien Relative filed on his behalf by his U.S. citizen wife. He presently seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), claiming that his inadmissibility would cause extreme hardship to his U.S. citizen wife.

The director found the applicant to be inadmissible on the basis of convictions, in 2002 and 1987, for criminal sale and attempted sale of marihuana. The director also cited the applicant's foreign convictions in 1960, 1961, 1962, and 1964 for assault and battery, assaulting police, throwing missiles, and possession of marijuana, respectively. The director further found that the applicant had failed to establish that his inadmissibility would result in extreme hardship to a qualifying relative. Accordingly, the application for a waiver of inadmissibility was denied.

On appeal, the applicant, through counsel, maintains that his wife would face extreme hardship should the waiver be denied. *See Applicant's Appeal Brief.* The appeal is accompanied by an opinion letter signed by Dr. Marilyn Schiller, a psychologist. The appeal is also accompanied by a sworn statement executed by the applicant's wife.

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 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)(B) of the Act states, in pertinent part:

Any alien convicted of 2 or more offenses . . . for which the aggregate sentence to confinement were 5 years or more is inadmissible.

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

(h) The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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 marihuana if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that -

- (i) ... the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(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 . . .

The record does not contain the applicant's record of conviction for the cited 2002 charge of criminal sale of marihuana (NY P.L. 221.40). The record does, however, contain copies of criminal dispositions for convictions in 1994 and 1993 for disorderly conduct violations (NY P.L. 240.20). The record further indicates that the applicant was charged in 1988 and 1987 for criminal sale or possession of marihuana. The record includes a criminal disposition indicating that the applicant was convicted in 1987 of violating NY P.L. 221.40 (criminal sale of marihuana) and sentenced to 10 days and a \$100 fine.

The AAO therefore affirms the director's inadmissibility charge. The AAO further notes that no waiver is available for drug related convictions (except for a single offense of simple possession of 30 grams or less of marihuana). The AAO therefore need not address the applicant's extreme hardship claim.

In proceedings for application for a waiver of grounds of inadmissibility, 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.