



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: LOS ANGELES, CA Date: DEC 12 2008

IN RE: [Redacted]

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grisson, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California and a subsequent appeal was rejected by the Administrative Appeals Office (AAO) as untimely filed. The AAO now reopens the matter on its own motion for the purposes of entering a new decision. 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)(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. 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 had failed to establish that extreme hardship would be imposed upon his spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 29, 2004.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that he had failed to meet the burden of establishing extreme hardship to a qualifying relative as necessary for a waiver. *Form I-290B*.

In support of the applicant's claim, the record includes, but is not limited to, criminal records for the applicant; statements from the applicant and his spouse; a home loan statement; an employment letter for the applicant's spouse; tax statements for the applicant and his spouse; school certificates for the applicant's children; and a bank statement for the applicant's spouse. The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. On January 6, 1988 the applicant pled guilty to possessing or purchasing rock cocaine for sale and received a prison term of three years. *Local Arrest Summary, Los Angeles Police Department*. On February 8, 1988 the applicant pled guilty to possessing a controlled substance for sale for which he received a prison term of three years. *Id.* On May 9, 1988, the applicant was again arrested on drug charges. He was subsequently convicted on the charge of possessing a controlled substance for sale. *FBI identification record*. In 2001, the applicant pled guilty to two counts of Driving Under the Influence for which he had to pay fines. *Court records, Superior Court of California, County of Riverside*.

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 . . .

Inadmissibility under section 212(a)(2)(A)(i)(II) of the Act may be waived only as it relates to a single offense of simple possession of 30 grams or less of marijuana. The applicant in this matter has been convicted of possessing or purchasing cocaine for sale and he is, therefore, 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.

In proceedings for an 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. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.