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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: CHICAGO

Date:

DEC 15 2008

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.

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. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Jordan 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 seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The district director concluded that the applicant failed to show that a qualifying relative will experience extreme hardship, and denied the application accordingly. *Decision of the District Director*, dated November 7, 2005.

On appeal, counsel for the applicant contends that the applicant has shown that a qualifying relative will experience extreme hardship if he is prohibited from remaining in the United States. *Brief from Counsel in Support of Appeal*, submitted January 9, 2006.

The record contains a brief from counsel; a copy of the applicant's father's naturalization certificate; statements from the applicant's father and mother; a statement from the mother of the applicant's alleged child; a copy of a birth record for the applicant's alleged child; documentation of the applicant's employment activities and training; general references from acquaintances of the applicant; a copy of the applicant's father's U.S. passport; a copy of the applicant's Form I-94, Departure Record; copies of tax documents for the applicant's parents; a copy of the applicant's passport; documentation of a mortgage for the applicant's father; a birth record for the applicant; documentation relating to conditions in Jordan, and; documentation relating to the applicant's criminal activity. The entire record was reviewed and considered in rendering this decision.

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

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)(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

Upon review, the applicant is not eligible for a waiver under section 212(h) of the Act, as he was not convicted of only “a single offense of simple possession of 30 grams or less of marijuana.” Section 212(h) of the Act. The record reflects that on June 17, 1999 the applicant was found guilty of violating Illinois Compiled Statutes 720-550 § 5(b).¹ Illinois Compiled Statutes 720-550 § 5(b) states the following:

It is unlawful for any person knowingly to manufacture, deliver, or possess *with intent to deliver, or manufacture*, cannabis. Any person who violates this section with respect to:

(b) more than 2.5 grams but not more than 10 grams of any substance containing cannabis is guilty of a Class A misdemeanor

(emphasis added). It is noted that Illinois Compiled Statutes 720-550 § 4(b) criminalizes simple possession of any substance containing cannabis as follows:

It is unlawful for any person knowingly to possess cannabis. Any person who violates this section with respect to:

(b) more than 2.5 grams but not more than 10 grams of any substance containing cannabis is guilty of a Class B misdemeanor

The applicant was not charged or convicted under Illinois Compiled Statutes 720-550 § 4(b), thus his conviction was not for simple possession. He was charged and convicted under Illinois Compiled Statutes 720-550 § 5(b) which has an element of possession of cannabis, as well as an element of “intent to deliver, or manufacture.” Illinois Compiled Statutes 720-550 § 5(b). Accordingly, the applicant has not established that his conviction was only for a single offense of simple possession of 30 grams or less of marijuana. Section 212(h) of the Act.

¹ The applicant was simultaneously charged under Illinois Compiled Statutes 720-550 § 5.2(c). However, it is evident that he was convicted under Illinois Compiled Statutes 720-550 § 5(b). The applicant was deemed guilty of a Class A Misdemeanor, which results from a conviction under Illinois Compiled Statutes 720-550 § 5(b). However, conviction under Illinois Compiled Statutes 720-550 § 5.2(c) results in a Class 2 felony.

It is noted that in *Matter of Michel* the Board of Immigration Appeals referred specifically to the fact that, in certain cases, there are limits to an alien's eligibility to seek a waiver of inadmissibility pursuant to section 212(h) of the Act. *See Matter of Michel*, 21 I&N Dec. 1101, 1103 (BIA 1998). For example, a section 212(h) waiver is generally not available to section 212(a)(2)(A)(i)(II) cases involving controlled substance crimes. The Act makes it clear that the section 212(h) waiver applies only to controlled substance cases that involve a single offense of possession of 30 grams or less of marijuana. Based on the foregoing, the applicant has not shown that he is eligible for a waiver of inadmissibility under section 212(h) of the Act.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he has established extreme hardship to a qualifying relative or whether he merits a 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.