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U.S. Department of Homeland Security  
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U.S. Citizenship  
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FILE:

Office: ST. PAUL, MN Date:

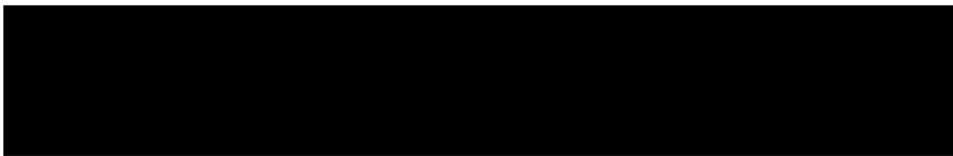
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IN RE:



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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, St. Paul, Minnesota. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guatemala who was found to be inadmissible to the United States pursuant to 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 crimes involving moral turpitude. The record indicates that the applicant has a U.S. citizen spouse and three U.S. citizen step-children. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The field office director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated October 16, 2007.

On appeal, the applicant asserts that the field office director ignored evidence of extreme hardship including the lack of medical care in Guatemala, as well as the impact of separation and the trauma of being ripped away from an extensive support network on the applicant's spouse. *Form I-290B*, received November 14, 2007.

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

- (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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
  - (II) A violation (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, that:

- (h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) and of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if –

....

- (1)(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 field office director's decision lists a combination of 17 criminal charges and convictions for the applicant, and evaluated the applicant's eligibility for a section 212(h) waiver. The AAO notes that the applicant pled guilty on April 20, 1987 to Criminal Possession of a Controlled Substance in the 7<sup>th</sup> Degree (Section 220.03 of the New York Penal Law). The applicant was then arrested on April 22, 1987, under the alias [REDACTED], and was convicted in New York of Criminal Possession of a Controlled Substance.<sup>1</sup> The record does not state which controlled substances the applicant possessed and therefore is not clear as to whether the substances render him inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act. Though asked to provide complete court dispositions for all of his convictions, the applicant has failed to provide sufficient information related to these particular convictions.

In that the record is not clear as to which controlled substances the applicant possessed, he has failed to establish that he qualifies to apply for a waiver of inadmissibility under section 212(h) of the Act, which provides a waiver related to drug convictions only in instances where an individual has been convicted of a single offense of simple possession of 30 grams or less of marijuana

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. As the applicant has not established that he is not inadmissible under section 212(a)(2)(A)(i)(II) of the Act, the applicant has not met that burden. Accordingly, the appeal will be dismissed.<sup>2</sup>

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The AAO notes that the applicant was charged with Possession of a Class D Controlled Substance in Massachusetts on February 22, 1990, but this charged was dismissed.

<sup>2</sup> The applicant has established that he may file a section 212(h) waiver for his crimes involving moral turpitude, however, no purpose would be served in adjudicating this waiver until the section 212(a)(2)(A)(i)(II) issue is resolved.