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FILE: [REDACTED] Office: CHICAGO (MILWAUKEE, WI) Date: **MAY 12 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 waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. 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 sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The district director found that the applicant failed to establish extreme hardship to a qualifying relative, and denied the waiver applicant. *Decision of the District Director, dated January 4, 2006.* The applicant filed a timely appeal.

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)(I), (B), (D), and (E) of subsection (a)(2) . . . 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 the applicant was convicted of unlawful possession of a controlled substance, class 4, in violation of 720 ILCS 570/402(c) in that he knowingly and unlawfully possessed less than 15 grams of a substance containing a controlled substance, cocaine. *In the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, Information; Order and Certificate for Probation Pursuant to Section 555/10 and 410 of Chapter 56 ½ of the Illinois Revised Statutes.* The applicant was sentenced to 24 months probation, was ordered to pay a fine and court costs, perform public service, and undergo drug/alcohol testing. This conviction renders the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act, U.S.C. § 1182(a)(2)(A)(i)(II).

On appeal, counsel states that the applicant's family would experience hardship if the waiver application were denied.

A section 212(h) waiver applies to controlled substance cases that involve a single offense of simple possession of 30 grams or less of marijuana. Because the record shows that the applicant's controlled substance conviction did not involve a single offense of simple possession of 30 grams or less of marijuana, but involved cocaine, the applicant is not eligible for a waiver under section 212(h) of the Act. The applicant is therefore statutorily ineligible for a waiver.

**ORDER:** The appeal is dismissed.