

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2



FILE:

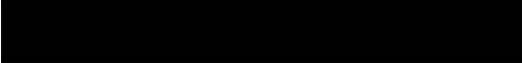


Office: PHOENIX, ARIZONA

Date: **MAY 12 2008**

IN RE:

Applicant:



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:

SELF-REPRESENTED

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 Acting District Director, Phoenix, Arizona, 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)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(C). The applicant filed a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), which the acting district director denied, finding that a waiver is not available for inadmissibility under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C). *Decision of the Acting District Director of Services, dated November 14, 2005.* The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility.

The applicant was found inadmissible under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), which relates to controlled substance traffickers.

The record reflects that on August 28, 1974, the Yuma Country Sheriff's Office in Yuma, Arizona, arrested the applicant while attempting to import marijuana into the United States, and on December 12, 1974, the Superior Court of the State of Arizona found the applicant guilty of felony possession of marijuana with intent to sell. The imposition of the sentence was suspended by the judge and the applicant was ordered to serve six months in the county jail and was placed on probation for seven years.

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(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), which relates to controlled substance traffickers, states the following:

Any alien who the consular officer or the Attorney General knows or has reason to believe—

- (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as

defined in section 802 of title 21), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

The term “controlled substance” is defined as a drug or other substance, or immediate precursor, included in Schedule I, II, III, or IV of part B of Title 21, Chapter 13, Subchapter I, Part A of the United States Code. 21 U.S.C. § 802(6). The term “marihuana” is defined at 21 U.S.C. § 802(16), and is listed in Schedule I as a controlled substance. 21 U.S.C. § 812. Thus, the AAO finds that the applicant’s conviction of possession of marijuana with intent to sell relates to a “controlled substance.”

The AAO finds that the applicant’s conviction establishes that it was reasonable for the acting district director to believe that the applicant is or has been an illicit trafficker in any controlled substance or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in a “controlled substance.” In addition, the applicant is clearly inadmissible under section 212(a)(2)(A)(i)(II) based on his conviction of a crime involving a controlled substance.

A waiver under section 212(h) of the Act is not available for inadmissibility under section 212(a)(2)(A)(i)(II) or 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II) and (a)(2)(C).

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.