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U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: ST. PAUL, MINNESOTA

Date:

FEB 28 2003

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)

IN BEHALF OF APPLICANT:

[REDACTED]

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, St. Paul, Minnesota, and is now before the Associate Commissioner for Examinations 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), for being an alien who an immigration officer has reason to believe is or has been an illicit trafficker in a controlled substance. The applicant is married to a United States citizen and is the beneficiary of an approved petition for alien relative. He seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. 1182(h), in order to remain in the United States and reside with his spouse and children.

The acting district director concluded that the applicant was not statutorily eligible for a waiver due to a finding of inadmissibility under section 212(a)(2)(C) of the Act and denied the application accordingly.

On appeal, counsel asserts that the applicant's family will suffer extreme hardship if the applicant is removed from the United States and that the district director erred denying the applicant's waiver request. Counsel asserts that the district director did not properly weigh the evidence presented; did not accurately state the facts of the case; presented no substantial evidence to support his findings of fact and conclusions of law; and failed to recognize the expungement of the applicant's convictions. Counsel indicates that a brief and/or evidence will be forthcoming within 30 days after filing the appeal. Since more than fifteen months have passed and no new information or documentation has been received, a decision will be rendered based on the present record.

The record reflects the following regarding the applicant's criminal history:

On December 4, 1990, he was arrested in Los Angeles, California for Burglary. A juvenile petition was requested.

On November 9, 1991, he was arrested in Los Angeles, California for Possession/Purchase Cocaine Base for Sale. A juvenile petition was requested.

On January 7, 1992, he was again arrested in Los Angeles, California for Possession/Purchase Cocaine Base for Sale. A juvenile petition was requested.

On April 27, 1992, he was arrested in Beverly Hills, California for Receiving/Etc. Known Stolen Property,

Carrying Concealed Weapon in Vehicle, and Carrying Loaded Firearm:Public Place. He was taken to juvenile hall.

On September 20, 1992, he was arrested in Los Angeles, California for Trespass:Occupy Property Without Consent. A juvenile petition was requested.

On April 3, 1994, he was arrested in Santa Monica, California for Burglary and Possession of Burglary Tools. Disposition not noted in the record.

On June 16, 1994, he was arrested in Santa Monica, California and charged with Taking Vehicle Without Owner's Consent/Vehicle Theft and Possession/Etc. Burglary Tools. The charges were dismissed.

On June 20, 1994, he was arrested in Santa Monica, California for Taking a Vehicle without Owner's Consent, Conspiracy: Commit Crime, Attempt Grand Theft Auto, and Tampering with Vehicle. On September 23, 1994, he pled guilty to Criminal Conspiracy and Attempted Grand Theft Auto. He was convicted of both and sentenced to two years probation, 45 days in jail, and restitution. Imposition of the sentence was suspended.¹

On July 2, 1994, he was arrested in Los Angeles, California for Force/ADW not Firearm: Great Bodily Injury Likely. Prosecution was rejected for lack of sufficient evidence.

On February 27, 1995, he was arrested in Los Angeles, California for Juvenile Warrant on the charge of Burglary. Disposition not noted in the record.

On June 23, 1995, he was arrested in Los Angeles, California for Vandalism:Deface Property. He pled nolo contendere, was placed on probation for 12 months, and given 15 days in jail. Imposition of the sentence was suspended and 10 days of community service was ordered in lieu of jail.

¹ The record contains a partial transcript of proceedings before the Municipal Court of Santa Monica Judicial District, County of Los Angeles, State of California. The transcript shows that on October 22, 1998, the court granted a petition to expunge the applicant's record. However, the transcript does not indicate what portion of the applicant's record was expunged. The cover letter submitted from counsel states that "the proceedings vacated the 1994 convictions."

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.- Except as provided in clause (ii), an alien convicted of, or who admits having committed, or who admits committing such acts which constitute the essential elements of-

* * *

(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 Substance Act (21 U.S.C. 802), is inadmissible.

* * *

(C) CONTROLLED SUBSTANCE TRAFFICKERS.- Any alien who the consular or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking of any such controlled substance, is inadmissible.

The record further reflects that the applicant has admitted that his criminal history was in connection with his participation in a gang in California. Based on the applicant's lengthy criminal history, his admission of being involved with gang activity, and his two separate arrests for Purchase/Possession of Cocaine for Sale, the district director found reason to believe that he had engaged in drug trafficking, for which no waiver is available.

On appeal, counsel has failed to establish that the applicant did not engage in drug trafficking. Therefore, the appeal will be dismissed as the applicant is statutorily ineligible for the waiver requested.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing eligibility remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.