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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: NOV 23 2004

IN RE: [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: 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, Director
Administrative Appeals Office

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

The applicant is a native and citizen of Canada 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 violation of law relating to a controlled substance. The applicant is the spouse of a citizen of the United States and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her spouse and children.

The interim district director concluded that the applicant was ineligible for a waiver under section 212(h) of the Act because she was convicted twice of possession of a narcotic. *Decision of the Interim District Director*, dated October 29, 2003.

On appeal, the applicant states that Citizenship and Immigration Services erred in denying her waiver because she was not convicted on a second occasion for possession of a narcotic. *Form I-290B*, dated November 24, 2003.

In support of these assertions, the applicant submits a brief and a chart reflecting punishments for possession and sale of marijuana in the state of Minnesota.

The record reflects that on October 7, 1993, the applicant was convicted of Possession of a Controlled Substance in the County Court of Rolette, North Dakota and was ordered to pay a fee of $250.00. The record further reflects that on July 3, 1984, the applicant was convicted of Possession of Marijuana in Motor Vehicle before a magistrate in Roseau County, Minnesota and was ordered to pay a fee of $335.00.

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

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> . . . .
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> (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 Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of ... subparagraph (A)(i)(II) of [subsection (a)(2)] insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if -
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> . . . .
>
> (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 applicant contends that she was not convicted of possession of marijuana in 1984. *Appeal of District Director's Denial of Application for a Waiver of Inadmissibility Pursuant to Section 212(h) of the Immigration and Nationality Act*, dated November 24, 2003. The applicant states that on or about June 25, 1984, an automobile in which she was traveling was searched as it crossed the border from Canada into the United States. As a result of the search, immigration officers found a "small amount of marijuana" that, the applicant alleges, she did not know was in her possession. *Id.* at 3. The applicant states that a small monetary fine was imposed and then she was released. She indicates that she did not receive any paper or document related to the incident. *Id.*

The applicant asserts that because she was never arrested, she was unaware that the incident in 1984 was considered a conviction. *Id.* at 4. The applicant, therefore, requests time and opportunity to obtain records relating to the incident. *Id.* The AAO notes that approximately one year has elapsed since the filing of the appeal and no further documentation has been received into the record. The applicant further contends that, regardless of the contents of the record regarding the 1984 incident, it was not a "conviction." *Id.*

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 –
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> (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 AAO notes that the record contains a copy of an Arrest Summons issued in the name of the applicant by the County of Roseau, Minnesota. The summons lists the charge as Possession of Marijuana in Motor Vehicle and indicates a plea of guilty and a court disposition of $335.00. The summons contains a statement signed by the applicant which reads, "I Tamela Donna Sigurdson deposit $335.00 as bail on Charge as listed on [redacted] and upon failure to appear in county court on July 3, 1984 at 9:30 a.m. [y]ou will enter my plea of guilty on my behalf". *Arrest Summons No. 2134*, dated June 25, 1984. The record establishes that the disposition of the 1984 incident resulted in a conviction within the meaning of section 101(a)(48)(A) of the Act. The applicant, therefore, has been convicted of two violations relating to a controlled substance and is ineligible for waiver pursuant to section 212(h) of the Act.

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

ORDER: The appeal is dismissed.