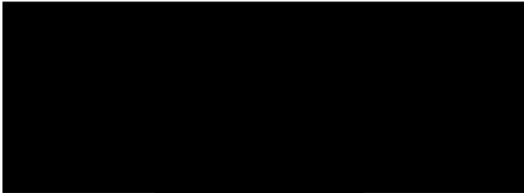


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FILE:

Office: KINGSTON, JAMAICA  
(RELATES)

Date: **SEP 24 2007**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(h) and Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 Officer in Charge, Kingston, Jamaica, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica 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 and section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an applicant who was previously removed from the United States. The applicant is married to a United States citizen and seeks waivers under section 212(h) and section 212(a)(9)(B)(v) of the Act, as well as an exception under section 212(a)(9)(A)(iii) in order to reside in the United States with his spouse.

The officer in charge, upon consideration of all the pertinent facts in the applicant's case, denied the waiver application as a matter of discretion. The officer in charge also found that the record did not establish that the applicant's relatives in the United States are going through difficulties severe enough to remove the bar that renders the applicant inadmissible to the United States. *Decision of the Officer in Charge*, dated November 14, 2005.

On appeal, counsel states that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility due to her various medical problems. *Counsel's Brief*, filed January 12, 2006.

The record reflects that on July 23, 1990, the applicant was found guilty of possession of a controlled substance in Philadelphia, PA. Therefore, he is inadmissible to the United States under section 212(a)(2)(A)(i) of the Act.

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

- (1) 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) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

In this case, the applicant was convicted of possession of a controlled substance. The Criminal Complaint for the Common Pleas Court of Philadelphia states that the applicant knowingly and intentionally possessed one packet of cocaine and twenty packets of marijuana. Thus, the applicant is statutorily ineligible to be considered for a section 212(h) waiver.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his U.S. citizen wife or whether he merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

**ORDER:** The appeal is dismissed.