identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: JUN 23 2009

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant is a citizen of Canada who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having violated a law related to a controlled substance. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The district director found that the applicant had failed to establish that he was convicted only for a single offense of possession of marijuana of 30 grams or less, failed to establish eligibility for a section 212(h) waiver, and he denied the application accordingly. *Decision of the District Director*, at 2-3 dated January 25, 2008.

On appeal, counsel asserts that the applicant's conviction in 1992 was for less than 30 grams of marijuana, therefore making him eligible for a section 212(h) waiver, and that his spouse would suffer extreme hardship if he were deported to Canada. *Brief in Support of Appeal*, at 1, undated.

The record includes, but is not limited to, counsel's brief, the applicant's criminal record, the applicant's statement, the applicant's spouse's statement, a psychological evaluation of the applicant's spouse and pregnancy confirmation for the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing 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... 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)(I) . . . of subsection (a)(2) . . . if -
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 record reflects that the applicant was convicted on December 21, 1992 of possession of a controlled dangerous substance under Maryland state law. On appeal, counsel submits the complaint report relating to the applicant's arrest, as well as a property/evidence form. Counsel asserts that the Ocean City Police Department's complaint report does not state the amount of marijuana found on the applicant, the officer's notes reflect that it was found in a small box in his front pants pocket, it would be physically impossible for the applicant to fit anywhere close to 30 grams in a container of such description, and the applicant is eligible for a waiver based on this evidence. *Brief in Support of Appeal*, at 2. The record reflects that marijuana was found in the rear seat (inside a cigarette pack) of the car that the applicant had been in, as well as in his front pants pocket (in a wooden box). *Applicant's Complaint Report*, at 3-5, *Property/Evidence Form 25A*, both dated May 25, 1992. It does not include sufficient evidence to establish the amount of marijuana that could be contained in a cigarette pack and a wooden box that would fit into a front pants pocket. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In that the record does not establish the amount of marijuana that the applicant possessed, he has not demonstrated that he is eligible for a section 212(h) waiver due to being convicted only for a single offense of possession of 30 grams or less of marijuana. Accordingly, he has not established that he is eligible for waiver consideration under 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.