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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

[redacted]

H2

FILE: [redacted] Office: MIAMI, FLORIDA Date: JUN 30 2009

IN RE: [redacted]

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)

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).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Chile who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the parent of two U.S. citizens and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his children in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen children and denied the application accordingly. *Decision of the District Director*, dated December 26, 2006.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dep't of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F.Supp.2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor*, 891 F.2d at 1002 n.9 (noting that the AAO reviews appeals on a de novo basis).

After a careful review of the record, the AAO finds that the applicant is inadmissible under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), as a controlled substance trafficker and is, therefore, ineligible for a waiver.

Section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), provides, in pertinent part:

> 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** . . . is inadmissible.

(Emphasis added.). There is no waiver available for a section 212(a)(2)(C) ground of inadmissibility.

Section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), states:

> (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 (as defined in Section 802 of Title 21),
>
> is inadmissible.

A waiver for a section 212(a)(2)(A)(i)(II) ground of inadmissibility is limited to a single offense of marijuana possession under certain circumstances. *See* section 212(h) of the Act, 8 U.S.C. § 1182(h).

In this case, the record shows and the applicant concedes that in 1983, he was convicted of conspiring to sell cocaine and sentenced to twelve months probation. *Brief on Appeal* at 2. The record shows that the applicant was one of six individuals arrested in a cocaine smuggling/distribution operation based in Miami, Florida. *Affidavit of* [redacted], dated September 18, 2006. Although the applicant never distributed or transported cocaine, he "facilitate[d] several money transfers." *Id.* Based on this information, the AAO finds that the applicant is inadmissible to the United States under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), as there is reason to believe he is or has been a conspirator with an illicit drug trafficker. There is no waiver available for this ground of inadmissibility. Counsel's contention that the applicant should not be found inadmissible under section 212(a)(2)(C) of the Act because the applicant himself never distributed or transported cocaine is unpersuasive as the applicant was an "aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking" of a controlled substance. Section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C).

The AAO also finds that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), as an alien convicted of a law relating to a controlled substance. There is no waiver available for this ground of inadmissibility as the applicant was convicted of conspiring to sell cocaine. Section 212(h) of the Act, 8 U.S.C. § 1182(h).

A review of the documentation in the record indicates that the applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), as a conspirator with a controlled substance trafficker, as well as 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), as an alien convicted of a law relating to a controlled substance. There is no waiver available for either

ground of inadmissibility. The AAO notes, moreover, that the applicant's four other arrests and convictions for petit larceny, felony grand theft, forgery, and passing a forged instrument weigh heavily against any favorable exercise of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.