



U.S. Citizenship  
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**FEB 04 2010**

FILE:



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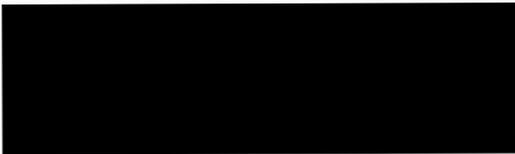
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IN RE:



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

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the 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 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. The applicant is the spouse of a U.S. citizen and the father and stepfather of six U.S. citizens. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse and children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) on June 29, 2005.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that he had failed to meet the burden of establishing extreme hardship to a qualifying relative as necessary for a waiver. He further asserts that his constitutional rights have been violated as the District Director identified his qualifying relative as a parent, when he has a U.S. citizen spouse and children.<sup>1</sup> The AAO notes, however, that the applicant fails to indicate in what respect he believes his constitutional rights to have been violated or to offer pertinent precedent decisions in support of this assertion. Moreover, it observes that, like the Board of Immigration Appeals (BIA), it cannot rule on the constitutionality of laws enacted by the Congress. *See., e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905 (BIA 1997); *Matter of C—*, 20 I&B Dec. 529 (BIA 1992). Accordingly, the AAO will limit its consideration in the present matter to the applicant's eligibility for a waiver of inadmissibility under section 212(h) of the Act.

The applicant has the following criminal history. On August 29, 2002, the applicant was convicted of New York Penal law § 221.40, Criminal Sale of Marihuana. On October 1, 1998, the applicant was convicted of California Penal Code (CPC) § 245(a)(1), Assault With a Deadly Weapon, in Los Angeles County Superior Court. The record also shows that the applicant was arrested by the California Police Department and charged with violation of CPC 187(a), Murder, First Degree: Shoot From Vehicle. The record does not contain an official disposition for this charge or evidence as to its final disposition.

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

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<sup>1</sup> The AAO notes that the District Director inadvertently referred to the applicant's qualifying relative as his U.S. citizen parent in the concluding sentence of her decision. It further finds the District Director to have misstated the section of law under which the applicant is eligible to seek a waiver and to have failed to consider hardship to applicant's children who are qualifying relatives for the purposes of this proceeding. However, for the reasons discussed in this decision, these errors do not affect the outcome of the applicant's waiver application.

(i) [A]ny 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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(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)(I), (B), (D), and (E) of 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 if—

(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 . . .

Inadmissibility under section 212(a)(2)(A)(i)(II) of the Act may be waived only as it relates to a single offense of simple possession of 30 grams or less of marijuana. As the applicant in this matter has been convicted of selling marijuana, he is ineligible for waiver consideration under section 212(h) of the Act. Having found that no waiver is available to the applicant in the present case, no purpose would be served in determining whether the record establishes that his spouse or children would suffer extreme hardship, as required for waiver approval under section 212(h) of the Act.

In proceedings for an 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.