

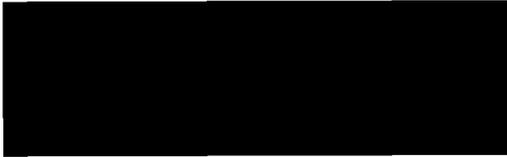
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FEB 18 2010

FILE:



Office: SACRAMENTO, CALIFORNIA
(consolidated therein)

Date:

IN RE:

Applicant:



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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Sacramento, 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 Mexico who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for violating any law or regulation relating to a controlled substance. The record indicates that the applicant is married to a naturalized United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen wife and children.

The Acting Field Office Director found that the applicant was ineligible to adjust his status based on his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Field Officer Director*, Part 3, dated May 14, 2007.

On appeal, the applicant claims that he “was convicted of charges that [he] did not commit.” *Form I-290B*, filed June 7, 2007.

The record of proceedings establishes that on November 26, 1997, the applicant was convicted of manufacture of a controlled substance, possession of a controlled substance, and theft in the first degree, and was sentenced to thirty (30) days in county jail and thirty-six (36) months probation. On November 23, 2000, the applicant successfully completed his probation. The AAO notes 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), for violating any law relating to a controlled substance. In order for the applicant to qualify for a waiver pursuant to section 212(h) of the Act, he must have been convicted of only a single offense of simple possession of 30 grams or less of marijuana. The AAO notes that the applicant was convicted of manufacturing and being in possession of methamphetamine. *See letter from [REDACTED]*, dated November 22, 2005. Since the applicant was not convicted of simple possession of 30 grams or less of marijuana, there is no waiver available for the applicant’s ground of inadmissibility. The applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, and, therefore, he is statutorily ineligible for a waiver of inadmissibility.

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

A) Conviction of certain crimes.-

(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, or

- (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 [her] 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...(emphasis added.)

In regards to his controlled substance conviction, the applicant states he was convicted of crimes he did not commit, and it was actually his roommates that got him in trouble. *See Form I-290B, supra*. The applicant claims that he “was young and ignorant of what was happening to [him] at that time.” *Id.* The applicant further states he “did everything that [he] was asked by the judge/court order trying to prove to everyone that [he] [is] a good person and [he] was at the wrong time in the wrong place when all this happened to [him]” *Id.* The AAO notes that “collateral attacks upon an [applicant’s] conviction do not operate to negate the finality of his conviction unless and until the conviction is overturned.” *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (citations omitted). Moreover, this office cannot go behind the judicial record to determine the guilt or innocence of an alien. *See id.*

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his United States 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 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.