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U. S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

H2

FILE:

Office: PORTLAND FIELD OFFICE Date: **APR 06 2011**

IN RE:

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

f/ Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Portland, Maine and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Liberia who was found to be inadmissible to the United States pursuant to 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 controlled substance violation and under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of crimes involving moral turpitude. The applicant has a U.S. citizen spouse and three U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

In a decision, dated September 18, 2008, the Field Office Director finds that the applicant has a significant criminal record including at least six convictions. The field office director finds that the applicant was found guilty of crimes involving moral turpitude. The field office director also states that the record indicates that the applicant pled guilty to unlawful possession of marijuana under Massachusetts General Laws (M.G.L.) c.94C, s.34 and that the criminal record referenced a previous violation by the applicant of the same statute. The field office director found that the applicant had failed to establish extreme hardship to her qualifying relatives as a result of her inadmissibility and failed to establish that she was only convicted of a single offense of simple possession of marijuana. The waiver application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated October 16, 2008, counsel states that the field office director erred as a matter of law and fact, abused his discretion, and failed to correctly balance the equities and hardship in the applicant's case.

The record indicates that on June 10, 1998 the applicant was arrested and charged with unlawful possession of marijuana under M.G.L. c94C, s.34. On October 7, 1998 the applicant pled guilty to the charge. The AAO notes that the record includes an "Incident Narrative Report" from the Malborough, Massachusetts Police Department which states that the approximate weight of the marijuana recovered from the applicant on June 10, 1998 was three grams. The AAO also notes that the criminal complaint in this case, dated June 10, 1998, states that the applicant had been previously convicted of violating M.G.L. c94C, s.34. Thus, the applicant is inadmissible under 212(a)(2)(A)(i)(II) of the Act.

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

(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 (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, that:

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) and of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

The AAO notes that section 212(h) of the Act provides a waiver for a 212(a)(2)(A)(i)(II) inadmissibility only when an applicant has been convicted of a single offense related to simple possession of 30 grams or less of marijuana. As the record indicates the applicant has been convicted of two offenses involving possession of marijuana, a waiver is not available to her under the Act. The AAO notes that the applicant has provided no evidence to refute the statement made in the criminal complaint, dated June 10, 1998, which asserts that she has been previously convicted of unlawful possession of marijuana. In proceedings for 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. *See* section 291 of the Act, 8 U.S.C. § 1361.

The AAO also notes that the applicant has a lengthy criminal history including convictions for larceny by check, assault and battery, resisting arrest, and threatening to commit a crime. Because the applicant has been found inadmissible under section 212(a)(2)(A)(i)(II) of the Act and no waiver is available to her, it is unnecessary to discuss her inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(h) of the Act. Having found the applicant statutorily ineligible to apply for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

As stated above, in proceedings for 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. *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.