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

(b)(6)

DATE: FEB 0 6 2013 Office: OAKLAND PARK, FL File:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Oakland Park, Florida, 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 criminal possession of more than two ounces of marijuana. He is the beneficiary of an approved Petition for Alien Relative (Form I-130) submitted by his U.S. citizen spouse. He does not contest this finding of inadmissibility, but rather is seeking a waiver of inadmissibility in order to remain in the United States with his wife.

The acting field office director concluded that there is no waiver available for the applicant's criminal conviction and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Acting Field Office Director,* June 3, 2011.

On appeal, the applicant contends that USCIS erred in not finding his wife will suffer extreme hardship as a result of the applicant's inadmissibility. In support of the appeal, he asserts that the denial failed to consider the totality of the circumstances of his over 30 years living in the United States since the conviction on which his inadmissibility is based. The record on appeal includes documentation submitted in support of the original waiver requests and several Applications to Register Permanent Residence or Adjust Status (Form I-485). The entire record was reviewed and considered in rendering this decision.

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 of (or 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.

The record reflects that on February 21, 1980, the applicant was arrested by the New York Police Department and charged with Possession of Marijuana. On February 22, 1980, he pled guilty to the offense in the Criminal Court of the City of New York of Possession of Marijuana, 4th degree, penal law 221.15.

Section 221.15 of the New York Penal Code, in effect at the time the applicant was convicted, provides:

> A person is guilty of criminal possession of marihuana in the fourth degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than two ounces.

Section 212(h) of the Act provides, in pertinent part:

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of . . . of subparagraph (A)(i)(II) . . . insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana ....

The record shows that the applicant has been convicted of possessing more than 2 ounces, or approximately 57 grams, of marijuana,[1] and was thus found inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act by the acting field office director and ineligible for a waiver under section 212(h) of the Act. Because the applicant is statutorily ineligible for a waiver of criminal grounds of inadmissibility, no purpose would be served in considering his extreme hardship claims.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden and, accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[1] One ounce equals 28.3495 grams.