**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

(b)(6)

U.S. Citizenship and Immigration Services

Date: FEB 13 2013 Office: KENDALL, FL FILE:

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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the Field Office Director, Kendall, Florida. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed. The waiver application remains denied.

The applicant is a native and citizen of Argentina 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 crime relating to a controlled substance. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant was convicted of possession of drug paraphernalia and was not eligible for a waiver of inadmissibility, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel argued that the applicant was not convicted of possession of drug paraphernalia because submitted documentation reflected the criminal case was a "no action" and expunged.

The AAO dismissed the appeal, determining that the applicant was inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act for having been convicted, within the meaning of section 101(a)(48)(A) of the Act, of possession of drug paraphernalia. In addition, the AAO concluded that the arrest record revealed the drug paraphernalia offense related to cocaine, and there was a factual basis to determine that the applicant was not eligible for a section 212(h) waiver.

On motion, counsel contends that the director erroneously concluded the applicant was convicted of possession of drug paraphernalia. Counsel argues that the director ignored documentation that showed the applicant's criminal case was a "no action," and subsequently expunged. Counsel states that the applicant has good moral character and receives medical treatment for human immunodeficiency virus.

In support of the motion, counsel submitted a letter from the program administrator with the dated August 18, 2009, and a letter from a doctor with the dated August 13, 2009.

A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. *See* 8 C.F.R. § 103.5(a)(3). A motion to reopen must state new facts. *See* 8 C.F.R. § 103.5(a)(2).

In the instant case, counsel makes no new legal argument, but simply reiterates the argument previously made on appeal, which was that the applicant was not convicted of possession of drug paraphernalia because his case was a "no action," and subsequently expunged. This issue was adequately addressed in our prior decision. In addition, the applicant has not established the requirements of a motion to reopen because no new facts have been stated. Accordingly, the motion is dismissed.

In proceedings for 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.

**ORDER:** The motion is dismissed.