U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: MAR 0 9 2013 Office: HIALEAH, FL FILE: [redacted]

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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 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, Hialeah, 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 Cuba who was found to be inadmissible to the United States pursuant to section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(C), for being a controlled substance trafficker. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), to procure admission to the United States. In a decision, dated September 29, 2011, the field office director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), stating that a waiver is not available for inadmissibility under section 212(a)(2)(C) of the Act.

On appeal, counsel asserts that the field office director erred in finding that the applicant was inadmissible as a controlled substance trafficker. She states that the record does not contain reasonable and substantial evidence to support this finding and that an arrest report, which eventually led to a dismissal, is not sufficient to support a reasonable suspicion in the absence of other corroborating evidence. Counsel states that the field office director erred in finding a lack of rehabilitation on the basis of a dismissed arrest for simple possession in 2009 and that the case presents outstanding equities and merits a favorable exercise of discretion. Finally, counsel asserts that the field office director erred in failing to consider an I-602 refugee waiver that was filed with his adjustment application and is based on his parole admission prior to April 1980.

In regards to the applicant's I-602 refugee waiver application, we note that while the AAO has appellate jurisdiction over a Form I-601, we do not have appellate jurisdiction over a Form I-602. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). We note further, that in the event the field office director denied the applicant's I-602 waiver, there is no appeal from the denial of a Form I-602. 8 C.F.R. § 207.3(b) A Form I-602 may, however, be considered by the immigration judge if the Form I-485, Application to Register Permanent Residence or Adjust Status, is renewed during removal proceedings pursuant to the regulation at 8 C.F.R. § 209.2(f). *See Adjudicator's Field Manual*, Chapter 41.6(b)(2)(B).

We will now address the finding of inadmissibility under section 212(a)(2)(C) of the Act. Section 212(a)(2) of the Act provides, in pertinent part, that:

> (A) Conviction of certain crimes.-
>
> (i) In general.-Except as provided in clause (ii), any 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 (other than a purely political offense) 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.

. . .

(C) Controlled Substance Traffickers - Any alien who the consular officer or the Attorney General knows or has reason to believe--

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so . . . 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), (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 -

. . .

(1) (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 [now the Secretary of Homeland Security (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 . . . .

In order for an applicant to be inadmissible under section 212(a)(2)(C) of the Act, the only requirement is that an immigration officer "knows or has reason to believe" that the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled, or endeavored to do so. *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9th Cir. 2000). In order for an immigration officer to have sufficient "reason to believe" that an applicant has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by "reasonable, substantial, and probative evidence." *Id.* (citing *Hamid v. INS,* 538 F.2d

1389, 1390-91 (9th Cir.1976)). Furthermore, it is noted that an applicant may be deemed inadmissible under section 212(a)(2)(C)(i) of the Act even where there has been no admission and no conviction, so long as there is "reason to believe" that the applicant engaged in the proscribed conduct relating to trafficking in a controlled substance. In the present matter, there is reason to believe that the applicant has been an illicit trafficker in a controlled substance. Specifically, there is reasonable, substantial, and probative evidence to support the belief that he has been an illicit trafficker in a controlled substance.

In the present matter, the Report and Recommendation and the Order on Review of the Report and Recommendation of the Magistrate from the U.S. District Court for the Southern District of Florida presents reasonable, substantial, and probative evidence to show that the applicant was an illicit trafficker in marijuana and/or assisted an illicit trafficker in marijuana. The initial Report and Recommendation, dated May 22, 1981, are findings of fact and conclusions of law following an evidentiary hearing that was held on April 10, 1982. The findings of fact include that the applicant was arrested after being found on a boat, hiding several bails of marijuana in its fishing box. The applicant and another man were the only two people on the boat at the time it was searched by U.S. Customs Officers. The applicant's companion stated to a customs officer that he was being paid ten to fifteen thousand dollars to traffic the bales of marijuana into the United States. The applicant was arrested, but not ultimately convicted because the search by customs officials was found to be illegal. Counsel's assertions regarding the record failing to contain reasonable and substantial evidence to support a finding under section 212(a)(2)(C) of the Act are unfounded. We note that our finding is not based on an arrest report, but a Report and Recommendation and an Order on Review of the Report and Recommendation of the Magistrate from the U.S. District Court for the Southern District of Florida, which made its findings of fact after an evidentiary hearing. In addition, on September 27, 1996, the applicant was convicted of purchasing marijuana.

Based on the foregoing, we find that there is sufficient reason to believe that the applicant has been an illicit trafficker in a controlled substance, and he is inadmissible under section 212(a)(2)(C)(i) of the Act. There is no provision under the Act that allows for waiver of inadmissibility under section 212(a)(2)(C)(i) of the Act.

In proceedings regarding a 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.