



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **MAY 09 2013** Office: PHILADELPHIA, PA

FILE: [REDACTED]

IN RE: [REDACTED]

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:
[REDACTED]

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Guinea 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 crimes relating to a controlled substance. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and two U.S. citizen children.

In a decision, dated February 2, 2012, the field office director found that the applicant was convicted of two offenses relating to possession of marijuana and was thus statutorily ineligible to apply for a waiver of inadmissibility under section 212(h) of the Act.

In a Notice of Appeal to the AAO (Form I-290B), dated February 28, 2012, counsel states that the applicant's children, particularly his son who suffers from a heart defect, would suffer extreme hardship as a result of the applicant's inadmissibility. He states further that the field office director erred in not exercising favorable discretion in the applicant's case as his convictions for a controlled substance occurred over 10 years ago and he has demonstrated that he has been rehabilitated.

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

Criminal and related grounds. —

(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 —

...

(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 shows that the applicant has been charged with multiple offenses during the time period between 1991 and 2005. On August 16, 1995, the applicant pled guilty to criminal possession of marijuana in the fifth degree under section 221.10 of the New York Penal Code. On November 15, 1999, the applicant again pled guilty to criminal possession of marijuana in the fifth degree under section 221.10 of the New York Penal Code.

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

The Attorney General may, in his 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

The applicant may be considered for a waiver of his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act if he was only convicted of a single offense relating to simple possession of 30 grams or less of marijuana. As stated above, the applicant was convicted of two separate offenses of possession of marijuana. Accordingly, he is statutorily ineligible for consideration for a waiver of his inadmissibility under section 212(a)(2)(A)(i)(II) 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, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.