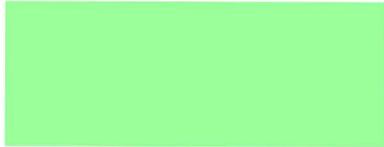




U.S. Citizenship
and Immigration
Services

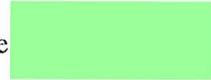
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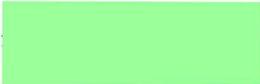
OFFICE: BOSTON FIELD OFFICE

File



IN RE: **MAY 14 2014**

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

f
Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Peru 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 involving a controlled substance. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The field office director concluded that due to the applicant's conviction he is ineligible for a waiver and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated December 11, 2012.

On appeal the applicant contends in Form I-290B, Notice of Appeal or Motion, that relief is available, and that without him his family would face hardship, as he is the provider. With the appeal the applicant submits a brief and letters of support from family and friends. The entire record was reviewed and considered in rendering this decision.

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 —

(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 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:

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 record reflects that on July 2, 2002, the applicant pled guilty to Possession of a Class B Substance with Intent to Distribute (cocaine), in Roxbury, Massachusetts, District Court, for conduct occurring on January 9, 2002. The applicant was sentenced to one year, suspended for 18 months. The record further reflects that the applicant pled guilty to Possession of a Class D substance (marijuana), and the matter was continued without finding until January 2, 2003 with the applicant placed on probation.¹ Based upon the foregoing, field office director determined that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The AAO concurs that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of crimes relating to a controlled substance. The applicant does not meet the waiver provision found in section 212(h) of the Act, as his conviction does not relate to a single offense of simple possession of 30 grams or less of marijuana.

On appeal the applicant asserts that he had not been advised of the immigration consequences of his plea and that the charges were never directly connected to him in the police report despite his plea. However, the record is clear that the applicant was convicted for crimes related to a controlled substance rendering him inadmissible under section 212(a)(2)(A)(i)(II), and that he does not qualify for consideration for a waiver under section 212(h) of the Act.

Because the applicant is statutorily ineligible for relief under the provisions described, no purpose would be served in discussing whether he has demonstrated rehabilitation, whether he has established extreme hardship to a qualifying relative, or whether he merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

¹ It appears from the record that the applicant violated probation and was found guilty of this charge on November 19, 2002 and sentenced to 6 months imprisonment.