



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF M-J-S-

DATE: MAR. 20, 2017

APPEAL OF ORLANDO, FLORIDA FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Cuba, seeks a waiver of the ground of inadmissibility for crimes involving moral turpitude and a controlled substance violation. *See* Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Field Office Director, Orlando, Florida denied the waiver application. The Director concluded that the Applicant was inadmissible under section 212(a)(2)(A) of the Act for having been convicted of crimes involving moral turpitude and a controlled substance violation. The Director then found that the Applicant did not warrant a favorable exercise of discretion because he did not show that he was rehabilitated.

The matter is now before us on appeal. In the appeal, the Applicant states that the Director did not apply the correct waiver standard in his case. He states that his U.S. citizen son will suffer extreme hardship as a result of his inadmissibility and, despite his criminal record, he warrants the favorable exercise of discretion.

Upon *de novo* review, we will dismiss the appeal. The Applicant is statutorily ineligible for a waiver under section 212(h) because he was convicted of a controlled substance violation.

I. LAW

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides that any foreign national convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or a violation of 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.

Individuals found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude or for a controlled substance violation related to a single offense of simple possession of 30 grams or less of marijuana may seek a discretionary waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Section 212(h)(1)(B) of the Act provides for a waiver if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter.

## II. ANALYSIS

On appeal, we must first determine whether the Applicant is statutorily eligible to apply for a waiver of inadmissibility under section 212(h) of the Act. If the Applicant is not eligible to apply for a waiver of his inadmissibility then no purpose would be served in determining whether his qualifying relative would suffer extreme hardship and whether he warrants the favorable exercise of discretion. The Director's decision indicates that he found the Applicant eligible to apply for a waiver, but then without making a decision regarding extreme hardship, found that the Applicant did not warrant the favorable exercise of discretion. On appeal, the Applicant states that his qualifying relative will suffer extreme hardship as a result of his inadmissibility and that he warrants the favorable exercise of discretion. We find that because the Applicant was convicted of a crime related to a controlled substance, he is not statutorily eligible to apply for a section 212(h) waiver of his inadmissibility.

As stated above, the Applicant has been found inadmissible under section 212(a)(2)(A) of the Act for crimes involving moral turpitude and a controlled substance violation, specifically the Applicant was convicted of two counts of burglary, two counts of petty theft, and one count of manufacturing marijuana. The Applicant does not contest his inadmissibility.

The record establishes that on [REDACTED] 2009, the Applicant pled nolo contendere to one count of manufacturing cannabis under Florida Statutes §893.13(1)(a)(2) and was sentenced to two years of probation.

At the time of the Applicant's conviction Florida Statutes §893.13(1)(a)(2) stated, in pertinent part, that it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. The record does not show that the Applicant's crime was related to simple possession of 30 grams or less of marijuana. Therefore, as a foreign national convicted of a crime related to a controlled substance that is not related to simple possession of 30 grams or less of marijuana, the Applicant is statutorily ineligible for a waiver under section 212(h) of the Act.

## III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. See section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. The Applicant is not eligible to apply for a waiver of his inadmissibility. The appeal is dismissed.

*Matter of M-J-S-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-J-S-*, ID# 154499 (AAO Mar. 20, 2017)