



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

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

In Re: 10879815

Date: MAR. 8, 2021

Appeal of San Antonio, Texas Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident (LPR) and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h).

The Director of the San Antonio, Texas Field Office denied the application, concluding that the Applicant was inadmissible under section 212(a)(2)(A)(i)(II) of the Act for a controlled substance violation but that he did not demonstrate his U.S. citizen spouse would suffer exceptional and extremely unusual hardship if he departs the United States. On appeal the Applicant submits a brief and additional evidence and asserts that the Director erred by using the wrong standard.

The Applicant bears the burden of proof in these proceedings to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

Any foreign national convicted of or who admits committing acts which constitute the essential elements of 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. Section 212(a)(2)(A) of the Act. Individuals found inadmissible under section 212(a)(2)(A)(i)(II) of the Act 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.

With the waiver application the Applicant submitted a personal affidavit and affidavits from his spouse, parents, and other individuals; a clinical report of his spouse from a therapist; financial records; civil documents; photographs; and country conditions information for Mexico. With the appeal the Applicant supplements the record with updated affidavits; medical records for his parents; psychological evaluations for his spouse and for his mother; and his official school transcripts.

In denying the waiver application, the Director detailed the Applicant's three arrests and determined that he was inadmissible for pleading no contest to a charge of possession of marijuana under 30 grams, for which he was sentenced to 120 days confinement. Court records confirm that in 2009 the Applicant pled *nolo contendere* to the charge and was found guilty by court. The Director listed evidence submitted by the Applicant in support of his waiver application and determined that the emotional and financial harm his spouse might suffer if she accompanies him to Mexico or remains in the United States is hardship that is ordinarily expected and that the Applicant did not demonstrate that his spouse would suffer exceptional and extremely unusual hardship. The Director further concluded that the Applicant's claim of financial difficulty for his spouse in his absence was negated because he stated he was an unemployed student, but did not provide school transcripts, and that he failed to provide income for his spouse.

On appeal the Applicant argues that the Director improperly used the exceptional and extremely unusual hardship standard because for a waiver of inadmissibility for a single conviction for simple possession of 30 grams or less of marijuana he need only show extreme hardship to his spouse or parents. The Applicant refers to additional evidence submitted on appeal to support his assertion that his spouse and parents will suffer extreme emotional, medical, and financial hardship if he departs the United States.

We agree with the Applicant's assertion that the Director erred by requiring him to demonstrate exceptional and extremely unusual hardship to his spouse. Further, as the Applicant states and as indicated above, the Applicant's parents, whom the record shows are lawful permanent residents, are also qualifying relatives for a waiver under section 212(h) of the Act, but the Director's decision did not identify the parents as qualifying relatives or address hardship to them. Therefore, we find it appropriate to remand the matter to the Director to review the evidence, including that submitted on appeal, to determine whether the Applicant has established extreme hardship to a qualifying relative, here his U.S. citizen spouse and his LPR parents. If the Director finds the Applicant has established extreme hardship to a qualifying relative, then the Director must consider whether the Applicant merits a favorable exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.