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U.S. Citizenship
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FILE:



Office: LOS ANGELES, CA

Date: APR 13 2006

IN RE:



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 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes determined by the district director to involve moral turpitude (possession of controlled substance for sale and a weapons charge). The record indicates that the applicant has a U.S. citizen spouse and three U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated September 14, 2004.

On appeal, the applicant asserts that the district director did not consider the evidence of extreme hardship to his fourteen year-old daughter. *Form I-290B*, dated, October 5, 2004.

The record includes, but is not limited to, the applicant's brief, the applicant's criminal records, photos of the applicant's family and letters/documentation related to the applicant's daughter's mental disability. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on June 20, 1987, the applicant was convicted under California Health and Safety Code § 11351, Possession or Purchase for Sale of Designated Controlled Substance, and on July 15, 1988, the applicant was convicted under California Penal Code § 245(a)(1), Assault with a Deadly Weapon of Force Likely to Produce Great Bodily Injury. The AAO notes that assault with a deadly weapon is a crime involving moral turpitude. However, the applicant's drug conviction is not a crime involving moral turpitude as California Health and Safety Code § 11351 does not include "knowledge" or "intent" as an element of the crime, as required by the BIA in *Matter of Khourn*, 21 I & N Dec. 1041 (BIA 1997).

The AAO has the authority to go beyond the district director's decision in finding grounds of inadmissibility. Specifically, the district director erred in not finding the applicant inadmissible pursuant to section 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i) for his sale of controlled substance conviction.

Section 212(a)(2)(C)(i) of the Act provides, in pertinent part, that:

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.

The AAO finds that the applicant is inadmissible under section 212(a)(2)(C)(i) of the Act and that no waiver is available under this section of the Act. Therefore, no purpose would be served in discussing whether his spouse or children have established extreme hardship under section 212(h) of the Act in regard to the applicant's crime involving moral turpitude (assault with a deadly weapon). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.