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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: LOS ANGELES

Date: **JUN 05 2006**

IN RE:

PETITION: 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 PETITIONER:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

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)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a violation of a law relating to a controlled substance. The applicant is the spouse of a U.S. citizen, the parent of two U.S. citizen children and the stepparent of one U.S. citizen child. He 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 with his spouse and children.

The district director concluded that the applicant failed to establish a qualifying family member would suffer extreme hardship and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 18, 2004.

The record reflects that, on November 17, 1995, under the name [REDACTED] the applicant was found guilty of possession of a controlled substance-cocaine, in violation of section 11350(a) of the Health and Safety Code of California. The applicant was sentenced to 90 days in jail and 36 months of probation.

On appeal, counsel asserts that the district director erred in finding that the applicant failed to establish extreme hardship to a qualifying family member because she did not correctly interpret the appropriate case law. *See Applicant's Brief* dated December 1, 2004. In support of the appeal, counsel submitted the above-referenced brief, a birth certificate for the applicant's most recently born child and copies of documents previously submitted. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (1) 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.

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
(emphasis added.)

A section 212(h) waiver is generally not available to section 212(a)(2)(A)(i)(II) cases involving controlled substance crimes. Indeed, the Act makes it very clear that the section 212(h) waiver applies only to controlled substance cases that involve a single offense of possession of 30 grams or less of marijuana. In this case, the applicant was convicted of unlawful possession of cocaine. The AAO therefore finds the district director incorrectly concluded that the applicant was eligible for a section 212(h) waiver. The AAO finds that the Act provides for no waiver for the applicant's ground of inadmissibility. Therefore, the applicant is statutorily ineligible for a waiver.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his U.S. citizen wife and children or merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.