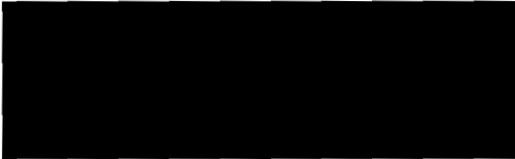




U.S. Citizenship
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FILE: [Redacted] Office: CHICAGO

Date: JUN 09 2006

IN RE: [Redacted]

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois, 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 sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving moral turpitude and 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 and parent of three U.S. citizen children. 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 is statutorily ineligible for a waiver of inadmissibility and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 21, 2004.

The record reflects that, on May 23, 1981, the applicant was convicted of unlawful use of a weapon and was sentenced to a one-year supervised conditional discharge. On June 21, 1982, the applicant was convicted of aggravated battery and was sentenced to two years of probation. On May 20, 1983, the applicant was convicted of possession of a controlled substance under 15 grams and was sentenced to 2 years probation. On November 7, 1988, the applicant was convicted of aggravated assault and was sentenced to a one-year supervised conditional discharge. On August 12, 1995, the applicant was arrested for and on November 29, 1995 he was convicted of unlawful possession of cocaine, a controlled substance in violation of paragraph 720, chapter 570/402(c) of the Illinois Compiled Statutes (ILCS). The applicant was sentenced to 24 months of probation.

On appeal, counsel asserts that the district director's decision should be reversed because he abused his discretion when he failed to provide reasoning for his denial. *See Applicant's Brief* dated November 12, 2004. In support of the appeal, counsel only submitted the above-referenced brief. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant's criminal record indicates that the applicant was, in 1995, convicted of unlawful possession of cocaine and was ordered to serve 24 months of probation.

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.)

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. Thus, the district director correctly concluded that the applicant is statutorily ineligible to be considered for a section 212(h) waiver.

Because the applicant is statutorily ineligible for relief due to his conviction for possession of cocaine, 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.