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U.S. Citizenship
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FILE:



Office: LOS ANGELES, CA

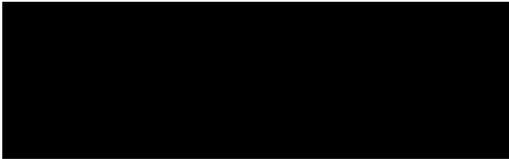
Date: OCT 30 2007

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.

Robert P. Wiemann, Chief
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 applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States under 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 a crime involving moral turpitude. The applicant is the son of a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States.

The district director concluded that the record did not establish that the applicant's mother would experience extreme hardship as a result of the applicant's removal. The Application for Waiver of Grounds of Excludability (Form I-601) was denied accordingly. *Decision of the District Director*, dated August 31, 2005.

On appeal, counsel states that the applicant's mother would suffer extreme hardship as a result of the applicant's removal because the applicant is his mother's source of financial support and his mother suffers from a medical condition. *Form I-290B*, dated September 27, 2005.

The record reflects that on June 22, 1992, the applicant was convicted of Robbery under California penal Code section 212.5(B) and sentenced to 2 years imprisonment. The record also reflects that on August 15, 1989 the applicant was convicted of Possession of a Narcotic Controlled Substance under Section 11350(a) of the California Health and Safety Code.

Section 11350(a) states that:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

The AAO notes that marijuana is listed in Section 11054(d)(13) of the California Health and Safety Code and is not specified as a possible controlled substance that could have been in a person's possession for a conviction under Section 11350(a) of the California Health and Safety Code.

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 –
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
 - (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.)

In this case, the applicant was convicted of possession of a controlled substance that because of the substances specified under the statute, could not have been marijuana. Thus, the applicant is statutorily ineligible to be considered for a section 212(h) 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 mother or whether he merits the 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.