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U.S. Citizenship
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Services

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FILE:



Office: SAN ANTONIO, TEXAS

Date: **APR 24 2008**

IN RE:

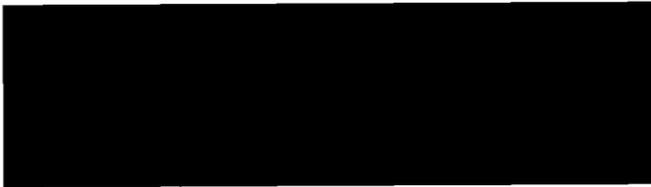
Applicant:



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 waiver application was denied by the District Director for Services, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Netherlands who was found to be inadmissible to the United States under section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(C). The applicant filed a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), which the district director denied, finding that a waiver is not available for inadmissibility under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C). *Decision of the District Director for Services, dated August 9, 2004.* The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility.

The district director found the applicant inadmissible under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), which pertains to controlled substance traffickers.

In denying the adjustment application, the district director stated that the record shows that on June 17, 1997 the Court of Amsterdam found the applicant guilty of possessing and/or trafficking forbidden chemicals “piperonyl methylketone,” which the district director stated is used in manufacturing the illegal drug known as Ecstasy. The district director stated that the applicant’s conviction of possession and/or trafficking provides reason to believe that he was a knowing assistor, abettor, conspirator, or a colluder with others in the illicit trafficking of controlled substances.

The record contains an article about the illegal drug Ecstasy; the judgment of conviction; a letter and curriculum vitae by [REDACTED] with the Department of Chemistry, Emory University, Atlanta, Georgia; a bibliography on the use of piperonyl methyl ketone; a letter dated November 29, 2004 by the applicant; and other documents.

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

(2) 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(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), which relates to controlled substance traffickers, states the following:

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 802 of title 21), 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; or
(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,
is inadmissible.

The applicant's judgment of conviction in the Netherlands states the following:

Qualification: Participated in violation of regulation mentioned in article 5 of the law to prevent abuse of chemicals, twice committed.

Applied articles of law:

22b, 47, 62 and 63 criminal law; article 5 of the law to prevent abuse of chemicals; article 1 and 6 of the law on economic offenses.

Committed on:

Period 1 August 1996 to 29 October 1996

Decision:

Defendant is convicted . . . sentenced to perform 120 hours of unpaid labour to promote public welfare . . .

And

Convicts defendant . . . to perform 120 hours unpaid labour to promote public welfare

On appeal, counsel states that the applicant was convicted in the Netherlands of violating "the law to prevent abuse of chemicals" and of "the law on economic offenses." Counsel states that, although not delineated in the record of conviction, the controlled substance involved in the applicant's case is piperonyl methyl ketone. Counsel contends that the term "piperonyl methyl ketone" is used to describe two different chemical substances, a controlled substance and a non-controlled one with a variety of legal uses, and counsel refers to **the letter by [REDACTED]** to show that the name "piperonyl methyl ketone" is ambiguous and used to describe two different chemical substances, 3,4-methylenedioxyphenyl radical and/or 3,4-methylenedioxybenzyl radical.

Counsel states that 3,4-methylenedioxyphenyl radical is a List I chemical as defined by 21 U.S.C. section 802(34)(L) and is a controlled substance. Counsel states that 3,4-methylenedioxybenzyl radical is not a List I chemical and is not listed in any other section of the Controlled Substances Act. Counsel states that Mr. [REDACTED] indicates that it is impossible to know which compound, either I or II, is being referenced when given the name "piperonyl methyl ketone." Counsel states that compound II is widely used in the fragrance industry. Counsel states that referencing only to the term "piperonyl methyl ketone" makes it impossible to determine which compound, compound I or II, the applicant was convicted of transporting. Counsel states that the applicant has no way of obtaining this information from the Dutch authorities as the document submitted in the record is the only conviction record he could obtain. Counsel states that the applicant asserts that he thought that he was transporting the type of chemical used in the perfume industry because of his contractual relationship with the perfume company Kecofa, and counsel states that it is logical to conclude that the applicant was transporting compound II, as it is used in the fragrance industry. Counsel contends that the lack of documentation and the absence of systematic nomenclature in the conviction record demonstrate that Citizenship and Immigration Services (CIS) has not established that the chemical in question is a List I chemical under the Controlled Substances Act.

Counsel further states that CIS failed to provide reasonable, substantial, and probative evidence to show why there is a "reason to believe" that the applicant is a controlled substance or listed chemical trafficker, as stated in *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977). Counsel states that the applicant was not convicted of a trafficking offense. She states that the applicant was employed as a part-time contractor for Kecofa, a large perfume company in the Netherlands, and was a pilot for their corporate aircraft and ran various errands. Counsel states that the applicant was asked to transport chemicals by car that he understood to be for the manufacture of perfume. She states that his offense was not having the proper documentation for transporting the chemicals – thus the economic aspect of his offense. Counsel states that the statement made in the Form I-601, that the applicant was "convicted of possessing and traffickin [sic] 2 jizzy cans containing 50 liters total of chemicals," is incorrect as the applicant was convicted of violating "the law to prevent abuse of chemicals" and of "the law on economic offenses." Counsel contends that *Matter of Davis*, 20 I&N Dec. 536 (BIA 1992), defines drug trafficking as a business/merchant exchange with some sort of remuneration. She states that CIS has not established by reasonable, substantial, or probative evidence that the applicant was involved in any trading or dealing in piperonyl methyl ketane in the Netherlands.

The letter by [REDACTED], a synthetic chemist and lecturer in organic chemistry, states that piperonyl methyl ketone is in common use in research and industrial settings. He states that the term "piperonyl methyl ketone" is ambiguous. It is used to describe two different chemical substances. He states that ambiguity arises from use of the term "piperonyl," which may represent a 3,4-methylenedioxyphenyl radical or a 3,4-methylenedioxybenzyl radical. [REDACTED] states that the controlled substance known as "Ecstasy" at the core can be prepared by chemical synthesis of the compound piperonyl methyl ketone. He states that piperonyl methyl ketone is also used in insecticides and as a fixative and making agent in the fragrance industry.

The letter dated November 29, 2004 by the applicant states that during the years 1995 through 1996 he was a part-time contractor for Kecofa, a large perfume company in the Netherlands. He states that during that period of time he was a pilot for the company's corporate aircraft and ran various errands upon request. He states that in 1996 he was asked by an independent party, [REDACTED], to transport chemicals by car that he believed to be used in the manufacturing of perfume. He states that he was arrested and convicted of an

economical offense for not having the proper documentation for transporting those chemicals. He states that in court [REDACTED] did not admit to the involvement of the perfume company, and as a result, he and Mr. [REDACTED] were convicted. The applicant claims that he was acting under the direction of the perfume company.

In rendering this decision, the AAO has carefully considered all of the submitted evidence.

Counsel concedes that the applicant's conviction involved piperonyl methyl ketone. The submitted article in the record "Ecstasy explosion has no boundaries" states that piperonyl methyl ketone (PMK) is known as the raw material for MDMA, the chemical name for the dance drug Ecstasy. [REDACTED] states that the controlled substance known as "Ecstasy" at the core can be prepared by chemical synthesis of the compound piperonyl methyl ketone.

Piperonyl is shown as a list I chemical. 21 U.S.C. § 802(34)(R). The term "list I chemical" means a chemical that is used in manufacturing a "controlled substance." 21 U.S.C. § 802(34)(R).

The term "controlled substance" is defined as a drug or other substance, or immediate precursor, included in one of the schedules of Title 21, Chapter 13, Subchapter I, Part B of the United States Code. 21 U.S.C. § 802(6).

The term "immediate precursor" is defined as a substance:

- (A) which the Attorney General has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;
- (B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and
- (C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

Thus, the AAO finds that the applicant's conviction relates to a "list I chemical" that is used in manufacturing a "controlled substance" as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802.

Counsel claims that the applicant was convicted of two violations, "the law to prevent abuse of chemicals" and "the law on economic offenses." However, in addition to these violations, the judgment of the District Court (Amsterdam) shows the applicant was also convicted under 22b, 47, 62 and 63 of the criminal law; it is noted that the record does not contain documentation describing those criminal laws.

The AAO is not persuaded by counsel's assertion that the statement in the Form I-601, which is that the applicant was "convicted of possessing and traffickin [sic] 2 jizzy cans containing 50 liters total of chemicals," is incorrect. The applicant's former attorney had prepared the Form I-601 based on statements made by the applicant and the applicant signed the Form I-601. Thus, when the applicant signed the Form I-601 he was aware of the statements made in the waiver application.

The applicant asserts that it was his belief that the piperonyl methyl ketone that he transported was to be used by the fragrance company Kecofa. *Matter of Khalik*, 17 I&N Dec. 518 (BIA 1980), held that the Service cannot go behind the judicial record to determine the guilt or innocence of an alien for a criminal offense. A record of conviction constitutes a conviction for immigration purposes. The applicant can only appeal such a conviction within the court system.

The AAO finds that when considered cumulatively the documentation in the record establishes that the district director was correct in his reason to believe that the applicant is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in a controlled or listed substance or chemical. The applicant's admission in the Form I-601, the judgment of conviction, and the article about Ecstasy provide sufficient grounds for the director to reasonably believe that the applicant is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in piperonyl methyl ketone, the raw material for manufacturing Ecstasy.

It is noted that the evidence submitted on appeal, the applicant's November 29, 2004 letter and the letter by [REDACTED] provide additional reasons to believe that the applicant is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in piperonyl methyl ketone, the raw material for manufacturing Ecstasy. The applicant admits in the letter to transporting chemicals by car. He indicates that the independent third party, who was also involved in transporting the chemicals, did not in his defense state that the perfume company was involved in transporting the chemicals. The letter by Mr. [REDACTED] conveys that piperonyl methyl ketone is used in the manufacture of Ecstasy.

The AAO notes that a conviction is unnecessary if there is reason to believe that the applicant is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in a controlled or listed substance or chemical. *See, e.g. Alarcon-Serrano v. INS*, 220 F.3d 1116, 1119 (9th Cir. 2000).

A waiver under section 212(h) of the Act is not available for inadmissibility under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C).

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.