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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MIAMI, FL
[REDACTED] (relates)
IN RE: Applicant: [REDACTED]

Date: **NOV 24 2008**

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:

[REDACTED]

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The applicant is a native and citizen of Nicaragua who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) and section 212(a)(2)(A)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(2)(A)(i)(I) and §1182(a)(2)(A)(II), for having been convicted of a crime involving moral turpitude and a crime relating to a controlled substance. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director determined the applicant had failed to establish that a qualifying family member would experience extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant asserts, through counsel, that his criminal convictions occurred more than fifteen years before he filed an application to adjust his status to that of a lawful permanent resident. The applicant indicates that he therefore qualifies for a waiver under the provisions of section 212(h)(1)(A) of the Act. The applicant makes no other claims on appeal.

It is noted that, through counsel, the applicant indicated on his Form I-290B, Notice of Appeal to the Administrative Appeals Office that he would send a brief and/or additional evidence to the AAO within 30 days of filing the appeal. No additional brief or evidence was received by the AAO. On August 6, 2008, the AAO faxed a request for copies of any additional documentation submitted in the applicant's case. Counsel replied that no additional brief or evidence had been submitted in the applicant's case. The record is therefore, considered complete.

Section 212(a)(2)(A) of the Act provides that:

Conviction of certain crimes.-

(i) In general.-Except as provided in clause (ii), any (i) [A]ny 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 a 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.

The record reflects that the applicant was convicted of the following offenses:

July 6, 1984 – Burglary of Conveyance, with an Assault Therein, a felony, in violation of Florida Statutes Section 810.02. The applicant was sentenced to five years imprisonment.

July 6, 1984 – Battery, in violation of Florida Statutes Section 784.03. The applicant was sentenced to two years imprisonment.

August 18, 1988 – Introduction of Contraband (Marijuana) into Penal Institution, in violation of Florida Statutes Section 944.47. The applicant was sentenced to one year probation.

Florida Statutes Section 944.47 provides in pertinent part that:

(1)(a) Except through regular channels as authorized by the officer in charge of the correctional institution, it is unlawful to introduce into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send therefrom, any of the following articles which are hereby declared to be contraband for the purposes of this section, to wit:

...

4. Any controlled substance as defined in s. 893.02(4) or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.

“Controlled substance” is defined in Florida Statutes Section 893.02(4) as:

[A]ny substance named or described in Schedules I-V of s. 893.03. Laws controlling the manufacture, distribution, preparation, dispensing, or administration of such substances are drug abuse laws.

The AAO notes that the Controlled Substance Act lists Marijuana as a Schedule I, controlled substance.

The record reflects that the applicant’s conviction for Introduction of Contraband (Marijuana) into Penal Institution, in violation of Florida Statutes Section 944.47 is in violation of a Florida State law relating to a controlled substance. The AAO therefore finds that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, for having violated a State law relating to a controlled substance.

Section 212(h) of the Act provides in pertinent part that:

The Attorney General [Secretary] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of 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:*

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

- (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien (Emphasis added.)

It is noted that section 212(h) of the Act does not provide for the possibility of a waiver for a section 212(a)(2)(A)(i)(II) of the Act, ground of inadmissibility for a controlled substance offense which is not a single offense of simple possession of 30 grams or less of marijuana.

In the present matter, the record reflects that the applicant's conviction for Introduction of Contraband (Marijuana) into Penal Institution, in violation of Florida Statutes Section 944.47 is not a single offense of simple possession of Marijuana of 30 grams or less. Accordingly, the applicant's controlled substance related conviction is not within the scope of section 212(h) of the Act waiver relief. The applicant is therefore not eligible to apply for relief under section 212(h) of the Act.

The AAO notes that the applicant's convictions for burglary and battery also render him inadmissible under section 212(a)(2)(A)(i) for conviction of crimes involving moral turpitude. No purpose would be served, however, in discussing this inadmissibility as there is no relief available for his inadmissibility under section 212(a)(2)(A)(ii).

Section 291 of the Act provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has not met his burden in the present matter. The applicant's appeal will therefore be dismissed, and his Form I-601 denied.

ORDER: The appeal is dismissed. The application is denied.