

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[REDACTED]

FILE:

[REDACTED]

Office: MIAMI, FLORIDA

Date:

17 2008

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:

[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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States under 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 crimes involving a controlled substance. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen father. The applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his parents and sister.

The acting district director noted that in order to qualify for a waiver pursuant to section 212(h) of the Act, the applicant must have been convicted of only a single offense of simple possession of 30 grams or less of marijuana. *Decision of Acting District Director*, dated April 3, 2006. The acting district director concluded that because the applicant had two convictions for possession of marijuana with intent to sell, he was statutorily ineligible for a waiver of inadmissibility and denied his application accordingly. *Id.*

On appeal, counsel asserts that the acting district director erred as to the dates of the applicant's convictions. Counsel also contends that the applicant's arrest in 1999 was for twenty grams of marijuana, which is under the statutory amount of thirty grams. Counsel asserts that the applicant has been fully rehabilitated, is an upstanding member of the community and is eligible for consideration for adjustment of status.

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.)

The record reflects that the applicant was convicted on September 27, 1999 in the 17th Circuit Court in the County of Broward, Florida of possession with intent to sell, manufacture, or deliver, a controlled substance (marijuana) in violation of section 893.13(1)(a)(2) of the Florida Statutes. The applicant was again convicted on January 10, 2001 in the same court of possession with intent to sell, manufacture, or deliver, a controlled substance (marijuana) in violation of section 893.13(1)(a)(2) of the Florida Statutes. The applicant was sentenced on November 21, 2001 to concurrent sentences of one year incarceration for both offenses.

A section 212(h) waiver is not available to section 212(a)(2)(A)(i)(II) cases involving controlled substance crimes, except for a single offense of simple possession of 30 grams or less of marijuana. In this case, the applicant has two convictions for possession with intent to sell marijuana. The amount of marijuana the applicant possessed is immaterial, as the applicant has two convictions and neither conviction is for simple possession of marijuana. 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, no purpose would be served in discussing whether the applicant has established extreme hardship to his U.S. citizen wife 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.