



U.S. Citizenship  
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Services

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FILE:



Office: PHOENIX, AZ

Date: APR 01 2009

(Relates)

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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Phoenix, Arizona and 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 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 a crime involving a controlled substance. The applicant is the spouse of a naturalized United States citizen and the father of four United States citizen children. He now 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 with his spouse and their children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 30, 2006.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant had failed to meet the burden of establishing extreme hardship to a qualifying relative as necessary for a waiver. *Form I-290B*.

In support of the applicant's claim the record includes, but is not limited to, criminal court documents and records for the applicant; statements from the applicant's spouse; statements from the applicant's children; a medical letter and documentation for one of the applicant's children; certificates for the applicant; grade reports for the applicant's children; employment letters for the applicant and his spouse; W-2 Forms for the applicant and his spouse; tax statements for the applicant and his spouse; bank statements; car ownership certificate and insurance policy; a statement from the applicant; a statement from the applicant's church; and a statement from the school attended by one of the applicant's children. The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. On July 6, 2000 the applicant pled guilty to Driving Under the Influence, Possession of Drug Paraphernalia, and Operating a Motor Vehicle Without Being the Holder of a Valid Operator's License. *Court records, In the Justice Court of Sparks Township, County of Washoe, State of Nevada*, dated July 6, 2000. On October 17, 2002 the applicant pled guilty to Domestic Battery. *Court records, In the Justice Court of Reno Township, County of Washoe, State of Nevada*, dated October 17, 2002. On March 22, 2005, the applicant was convicted of Driving under the Influence, *Court records, In the Municipal Court of the City of Reno, County of Washoe, State of Nevada*, dated March 22, 2005.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
- (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.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (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 if—

(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 . . .

Prior to addressing whether the applicant qualifies for a Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility.

The applicant in the present case was convicted of Possession of Drug Paraphernalia. He is, therefore, inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act for having violated a law relating to a controlled substance. The AAO notes, however, that section 212(h) waivers of inadmissibility for controlled substance violations are limited to offenses of simple possession of 30 grams or less of marijuana. As the applicant in the present case has been convicted of controlled substance violation other than simple possession of 30 grams or less of marijuana, he is not eligible for waiver consideration under section 212(h).

Having found that a waiver is not available to the applicant in the present case, no purpose would be served in determining whether the record establishes that his spouse or children would suffer extreme hardship, as required for waiver approval under section 212(h) of the Act. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.