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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
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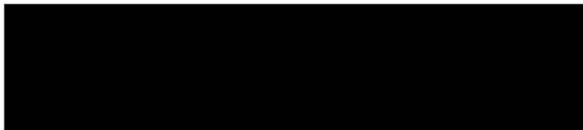
AUG 13 2009

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.

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, Los Angeles, 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 pursuant to 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. It is noted that the applicant is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a crime involving a controlled substance. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The district director concluded that the applicant failed to show that a qualifying relative will experience extreme hardship and denied the Form I-601, Application for Waiver of Ground of Inadmissibility, accordingly. *Decision of the District Director*, dated August 22, 2006.

On appeal, counsel for the applicant contends that the applicant's family members will experience extreme hardship should the applicant be prohibited from residing in the United States. *Brief from Counsel*, dated September 23, 2006.

The record contains a brief from counsel, evidence to show extreme hardship to the applicant's relatives, and documentation regarding the applicant's criminal history. The entire record was reviewed and considered in rendering this decision.

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

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 . . . .

The record reflects that the applicant has been convicted of multiple crimes including his August 11, 2003 conviction for being under the influence of a controlled substance (*cocaine*) under California Health & Safety Code section 11550(a) which states in pertinent part:

a) No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances.

As the applicant has a conviction relating to a controlled substance, he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act. He does not meet the waiver provision found in section 212(h) of the Act due to the fact that his conviction was not for “a single offense of simple possession of 30 grams or less of marijuana.” Section 212(h) of the Act. There is no provision under the Act that allows for a waiver of inadmissibility when an applicant has been convicted of being under the influence of cocaine.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he has established extreme hardship to his relatives, or whether he merits a 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.