

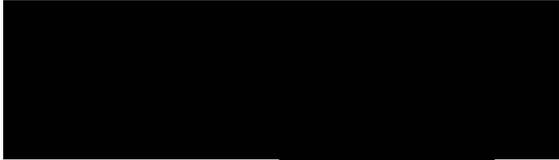
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H2



FILE:



Office: CHICAGO, IL

Date:

FEB 09 2009

IN RE:

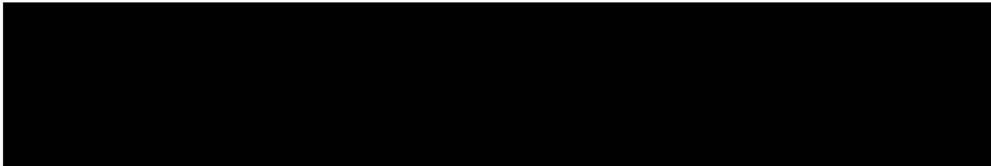
Applicant:



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.

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).

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

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

The applicant, [REDACTED], a native and citizen of the Ukraine 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 possession of tetrahydrocannabinols (THC), a controlled substance listed in schedule I of the Controlled Substances Act, 21 U.S.C. § 812. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his spouse, who is a naturalized citizen of the United States, and U.S. citizen children.

The district director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), finding the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, *Decision of the District Director*, dated June 14, 2004. The applicant submitted a timely appeal.

On appeal, counsel states that during the last few years the applicant's spouse, who has resided in the United States since she was a young girl, underwent procedures and surgeries due to a hearing loss and a condition known as otosclerosis. He states that the applicant's wife is in the first trimester of her third pregnancy and her ability to carry her child to its full term is uncertain. Counsel states that the applicant's mother-in-law was treated for breast cancer and underwent a triple bypass, requiring a complex open heart surgery, and is seen by her doctors on a six-month basis. He states that the applicant's wife and his mother-in-law are treated and observed on a regular basis by doctors at the Loyola University Medical Center. Counsel states that if the [REDACTED] family moved to the Ukraine, they would not find comparable treatment according to the U.S. Department of State's consular information sheet. Counsel states that the [REDACTED] family's medical insurance is through the applicant. Counsel states that the applicant's wife provides care for her mother and is extremely close to her. Counsel indicates that the applicant's wife's extended family members live in the United States as U.S. citizens, and that she has no family in Poland. According to counsel, the applicant's wife and son have never been to the Ukraine and are unfamiliar with its culture and its language. Counsel states that the applicant has real estate businesses in the United States in which there are 40 employees.

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

- (II) commit such a crime, or 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) of subsection (a)(2) . . . insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if – . . . in the case of an immigrant who is 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 that the alien’s denial of admission would result in extreme hardship to the United States citizen or lawfully permanent resident spouse, parent, son, or daughter of such alien.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The record reflects that on May 18, 1997, in the state of Wisconsin, the applicant was arrested for possession of marijuana and drug paraphernalia. He pled no contest to and was convicted of possession of a controlled substance, THC, in violation of Wis. Stat. Ann. § 961.41(3g)(e).<sup>1</sup> *In the*

---

<sup>1</sup> Wis. Stat. Ann. § 961.41(3g)(e) provides the following:

*Tetrahydrocannabinols.* If a person possesses or attempts to possess tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, the person may be fined not more than \$1,000 or imprisoned for not more than 6 months or both upon a first conviction . . .

Wis. Stat. Ann. § 961.14(4)(t) states that:

*Circuit Court of the State of Wisconsin, Dunn County, Judgment of Conviction and Sentence to the County Jail/Fine.* The judge's sentence involved forfeiture and payment of a fine. This conviction renders the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act, U.S.C. § 1182(a)(2)(A)(i)(II).

A section 212(h) waiver applies to controlled substance cases that involve a single offense of simple possession of 30 grams or less of marijuana. The applicant was convicted of possession of THC; the convicting record does not indicate the amount possessed. The drug equivalency of 1 gram of tetrahydrocannabinol, organic or synthetic, is 167 grams of marijuana. See *United States Sentencing Commission Supplement to the 2000 Guidelines Manual*, dated May 1, 2001, Drug Equivalency Table. The drug equivalency of 30 grams of marijuana is .18 grams of THC, organic or synthetic. Therefore, in order to be eligible for consideration for a waiver under section 212(h) of the Act, the applicant must establish that his conviction was for .18 grams or less of THC. The applicant has not established that his conviction for possession of THC meets the requirement of being a single offense of simple possession of 30 grams or less of marijuana; consequently, he has not demonstrated eligibility 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 children or whether he merits the waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval 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. The waiver application is denied.

---

Tetrahydrocannabinols, commonly known as "THC", in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana or chemically synthesized . . ."