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U.S. Department of Homeland Security  
20 Mass. Ave., NW, Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date:

**MAR 03 2009**

IN RE:

[REDACTED]

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:

[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.

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, California 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 crime involving moral turpitude. The applicant is the spouse of a lawful permanent resident and states she is the mother of a U.S. citizen child. She now seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her spouse and child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon her qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 21, 2006.

On appeal, counsel 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. Counsel also asserts that USCIS erred in failing to consider *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978) in exercising its discretion in this matter. *Form I-290B; Attorney's brief.*

In support of the applicant's claim, counsel submits a brief. The record also includes, but is not limited to, a police clearance letter for the applicant; criminal records for the applicant; an employment letter for the applicant; tax statements for the applicant; and W-2 Forms for the applicant. The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. On July 7, 1995 the applicant pled guilty to the offense of Child Cruelty: Poss Injury/Death under section 273a(a)(1) of the California Penal Code. *Criminal History Transcript, State of California, Department of Justice, Bureau of Criminal Identification; Minute Order, Superior Court of the State of California for the County of Orange*, dated July 7, 1995. The applicant was sentenced to serve two days in jail and placed on probation for five years. *Id.* On September 28, 1995 the applicant was arrested for Conspiracy: Commit Crime under section 182(a)(1) of the California Penal Code, Possess Marijuana For Sale under section 11359 of the California Health and Safety Code, and Sell/Furnish/Etc Marijuana/Hash under section 11360(a) of California Health and Safety Code. *Criminal History Transcript, State of California, Department of Justice, Bureau of Criminal Identification.* The applicant has not submitted criminal records to document whether she was convicted of these offenses.

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

(C) Controlled substance traffickers.—Any alien who the consular officer of the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so. . . 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. A section 212(h) waiver is available to an individual who is inadmissible under section 212(a)(2)(A)(i)(II) of the Act only in those instances where the individual has been convicted of a simple possession of less than 30 grams of marijuana. The applicant in the present matter was arrested for possession of a controlled substance for sale and sale/furnish of a controlled substance, crimes for which no waiver is available under section 212(h) of the Act. The applicant has not, however, provided dispositions for her arrests to establish that she was not convicted of these charges. Accordingly, she has failed to prove that she is eligible for waiver consideration under section 212(h) of the Act. The AAO notes that the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act.

As the record fails to establish that a waiver is available to the applicant under 212(h) of the Act, the AAO finds no purpose would be served in determining whether the record establishes that her spouse or child would suffer extreme hardship, as required for waiver approval under section 212(h) of the Act. Therefore, the appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The appeal is dismissed.