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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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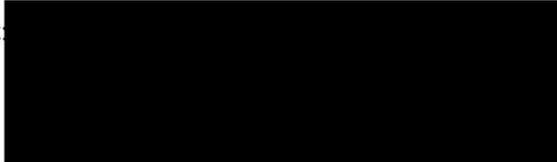


Office: NEWARK

Date: **MAY 01 2009**

IN RE:

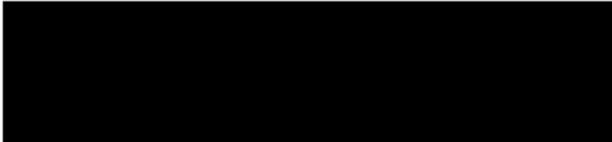
Applicant



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i).

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant has filed multiple applications and petitions. This decision is concerned with the Form I-601 waiver application denied on February 14, 2006, which was based on the Form I-485 Application to Adjust Status that was filed on March 20, 2000. All of the evidence in the record will be considered, however, notwithstanding that it may have been submitted in connection with some other application or petition.

The applicant is a native and citizen of Haiti, and an application for adjustment of status pursuant to the Haitian Refugee Immigrant Fairness Act (HRIFA). He is the husband of a U.S. lawful permanent resident (LPR), the son of a LPR, and the father of a U.S. citizen. He 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. He was also found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § (a)(6)(C)(i), for having misrepresented a material fact while seeking to enter the United States; and inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § (a)(2)(A)(i)(I), for having committed crimes involving moral turpitude.

The applicant sought waivers of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i), in order to remain in the United States with his wife, mother, and daughter.

The district director found that the applicant had failed to demonstrate that denial of his waiver application would result in extreme hardship to his wife, mother, or daughter.

On appeal, counsel argued that the evidence in the record is sufficient to demonstrate that the applicant's inadmissibility should be waived. Counsel did not contest the applicant's inadmissibility.

The AAO will first address in this decision the director's finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II).

Section 212(a)(2)(A)(i)(II) of the Act states that an alien who is convicted of, or admits having committed, or who admits committing acts which constitute the essential elements of a violation of a law relating to a controlled substance is inadmissible. 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 reveals the following offenses:

1. A memorandum from the Municipal Court of East Orange, New Jersey, shows that on March 17, 1996, the applicant was arrested for a violation of NJS 2c:33-4(a), harassment. On November 14, 1992 that charge was dismissed. ([REDACTED]
2. A portion of a report from an unknown agency indicates that on April 3, 1996 the applicant was charged with "terroristic threat." The disposition of that offense is unknown to the AAO. ([REDACTED]
3. A criminal history (rap sheet) obtained from the FBI through the applicant's fingerprints shows that, on April 4, 1996, the applicant was arrested, by the East Orange Police Department, for a violation of NJS 2c:12-3B, threatening to kill. On June 12, 1996 that charge was reduced to a violation of NJS 2c:33-4, harassment. On November 14, 1997 that charge was dismissed. [REDACTED]
4. A charging document in the record indicates that the applicant was arrested, on March 17, 1996, for a violation of NJS 2c:12-3A, threatening violence. On June 12, 1996 that charge was reduced to "Inconvenient Annoyance." The disposition of that offense is unknown to the AAO. (Case number [REDACTED]
5. A Form CPO106 from the New Jersey Superior Court and the applicant's rap sheet indicate that on September 16, 1996, the applicant was arrested, by the Bergen County Police Department, for a violation of NJS 2c:35-10a(1), possession of cocaine; and two counts of violating NJS 2C:36-3, distributing drug paraphernalia. The applicant was convicted of the paraphernalia offenses on March 3, 1998, and, on April 24, 1998, placed on two years of probation. [REDACTED]
6. A memorandum from the Township of Livingston, New Jersey and the applicant's rap sheet indicate that, on October 16, 1997, the applicant was arrested, by the Livingston Township Police Department, for a violation of NJS 2c:21-3B, public record fraud. On August 13, 1998 that charge was dismissed. ([REDACTED]
7. A memorandum from the Municipal Court of East Orange, New Jersey, shows that on January 21, 1998, the applicant was arrested for a violation of NJS 2c:20-5, uttering bad checks. On November 30, 1999 that charge was dismissed. [REDACTED]
8. A court disposition from the New Jersey Superior Court for Essex County shows that, on October 6, 1999 the applicant was arrested for a violation of NJS 2c:5-2, conspiracy; a violation of 2c:35-10a(1), possession of a controlled dangerous substance; a violation of NJS 2c:35-5b(2), possession of a controlled dangerous substance with intent to distribute; and a violation of 2c:36.3, possession of drug paraphernalia with intent to distribute. On October 31, 2000 the paraphernalia charge was amended to a violation of NJS 2c:33-2.1, loitering to obtain or distribute a controlled dangerous substance. The applicant was convicted of that offense, pursuant to his plea, and sentenced to six

months confinement, which sentence was suspended. The remaining counts were dismissed.

9. The applicant's rap sheet indicates that, on October 7, 1999, the applicant was arrested, by the Newark, New Jersey Police Department, for a violation of NJS 2c:35-10, possession/use of a controlled dangerous substance; a violation of NJS 2c:35-5, manufacture/distribute a controlled dangerous substance; a violation of NJS 2:35-7, possession of a controlled dangerous substance on school property; and a violation of NJS 2c:36-1, possession of drug paraphernalia. The dispositions of those offenses are unknown to the AAO. Whether those offenses are related to the offenses in number 8, above, is unknown to the AAO.

The applicant was convicted of two drug paraphernalia offenses in number 5, above. In *Minh Duc Luu-Le v. Immigration and Naturalization Service* (August 3, 2000), the Ninth Circuit Court of Appeals upheld a decision of the Board of Immigration Appeals (BIA) affirming an Immigration Judge's determination that a conviction for possession of drug paraphernalia was a conviction for violation of a law relating to a controlled substance. Each of the applicant's drug paraphernalia convictions is a violation of a law relating to a controlled substance, and each renders the applicant inadmissible.

In addition, the applicant was convicted of wandering for controlled dangerous substance in number 8, above, which is also a violation of a law related to a controlled substance, and which also renders the applicant inadmissible.

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

The Attorney General may, in his discretion, waive the application of . . . [212(a)(2)(A)(i)(II) of the Act] . . . 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.

A section 212(h) waiver is generally not available for inadmissibility pursuant to section 212(a)(2)(A)(i)(II) of the Act. Section 212(h) waiver applies to controlled substance cases that involve a single offense of possession of 30 grams or less of marijuana. No waiver is otherwise available for inadmissibility pursuant to section 212(a)(2)(A)(i)(II) of the Act.

None of the three convictions discussed above, each of which triggers the applicant's inadmissibility, is for possession of 30 grams or less of marijuana. No waiver of inadmissibility is available, therefore, for the applicant's inadmissibility pursuant to section 212(a)(2)(A)(i)(II) of the Act. Therefore, no waiver is available and the waiver application may not be approved.

Notwithstanding that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, which inadmissibility may not be waived, the AAO will briefly discuss the other bases for inadmissibility raised by the director and suggested by the record.

The director found that the applicant had been convicted of crimes involving moral turpitude. The director was apparently referring to the applicant's convictions in numbers 5 and 8, above, for possession of drug paraphernalia and loitering to obtain or distribute a controlled dangerous substance. The AAO is unaware of case law that demonstrates that those offenses are crimes involving moral turpitude, and because the applicant has been found permanently inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, and waiver has been found to be unavailable for that inadmissibility, no purpose would be served by a review of the salient case law to find such cases.

The applicant appears to have been arrested twice, in numbers 8 and 9, above, for offenses related to distribution of controlled substances. Multiple arrests for offenses related to distribution of controlled substances may constitute reason to believe that the applicant is or has been an illicit trafficker, or a knowing aider, abettor, assister, conspirator, or colluder, in illicit trafficking of a controlled substance, triggering inadmissibility pursuant to section 212(a)(2)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(C)(i), even without any convictions. *See Matter of Rico*, 16 I&N Dec. 181 (BIA 1977).

In this case, however, the arrests in numbers 8 and 9 may be related, or even identical. They may not, therefore, constitute multiple trafficking arrests. Further, whether only two trafficking arrests, even with multiple counts, but absent convictions, are a sufficient basis for finding an alien inadmissible pursuant to section 212(a)(2)(C)(i) of the Act is unclear. Again, because the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, and no waiver is available, this office will not conduct an analysis to determine whether he should also be found inadmissible pursuant to section 212(a)(2)(C)(i) of the Act. The AAO will not, therefore, find the applicant inadmissible pursuant to that section.

The district director found the applicant inadmissible pursuant to section 212(i)(1) of the Act for two different instances of alleged material misrepresentations. In the first instance, the record demonstrates, and the applicant admits, that the applicant attempted to enter the United States on May 14, 1988, at the Miami International Airport, presenting a passport bearing the name Natanael Cleophas, and representing himself to be that person. That is sufficient to demonstrate that the applicant is inadmissible pursuant to Section 212(a)(6)(C)(i) of the Act for making a material misrepresentation when applying for admission to the United States.

In the second instance, a Form I-94 in the record indicates that, on May 14, 1988, the applicant was paroled into the United States in Miami, Florida. On a Form I-589, Request for Asylum, that the applicant signed on July 24, 1989, the applicant stated that he was paroled into the United States on May 14, 1988.

However, on Forms I-485 submitted on November 28, 1995 and March 20, 2000, on a Form I-130 submitted on November 29, 1996, and on a Form I-765, Application for Employment Authorization submitted on April 23, 2002, the applicant represented that he entered the United States without inspection on that same date.

In his December 3, 2005 declaration the applicant indicated that he never told his previous attorneys¹ that he entered the United States without inspection and did not know why they entered that information on his applications. The applicant provided no evidence, however, in support of the assertion that he was unaware that all three previous attorneys misstated how the applicant entered the United States. The AAO finds that the evidence in the record supports that the applicant intentionally misrepresented how he entered the United States on May 14, 1988. This is a material misrepresentation made while attempting to obtain permanent resident status, and also renders the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Waiver is available for inadmissibility pursuant to section 212(i)(1) of the Act if an applicant shows that failure to grant it would cause extreme hardship to a qualifying family member. However, because the applicant has also been found inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, for which inadmissibility no waiver is available, the AAO declines, in this case, to discuss whether the applicant has demonstrated that failure to approve the application for waiver would result in extreme hardship to his wife, mother, or daughter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) of the Act, the burden of proving eligibility 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.

¹ Those four applications were filed by three different attorneys. The applicant's current counsel is not any of those three attorneys.