

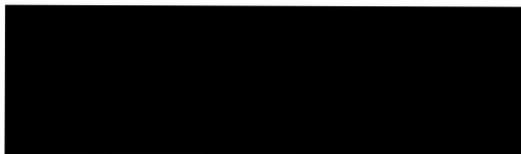
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



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

U.S. Citizenship
and Immigration
Services



H-2

FILE: [REDACTED] Office: SAN FRANCISCO, CALIFORNIA Date: **SEP 21 2009**

IN RE: Applicant: [REDACTED]

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: 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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Peru who was found to be inadmissible to the United States pursuant to 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 violating a law relating to a controlled substance. The record reflects that the applicant's grandmother, who legally adopted the applicant, is a naturalized United States citizen, and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen grandmother.

The District Director determined that the applicant was ineligible for any waiver because he failed to prove that his controlled substance convictions "were for merely 'a single offense of simple possession of 30 grams of marijuana...'", and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 29, 2006.

The AAO notes that in order for the applicant to qualify for a waiver pursuant to section 212(h) of the Act, he must have been convicted of only a single offense of simple possession of 30 grams or less of marijuana. If the applicant was convicted of a controlled substance offense, and it was not for being in possession of 30 grams or less of marijuana, there is no waiver available for this ground of inadmissibility, and the applicant will be statutorily ineligible for a waiver of inadmissibility.

Section 212(a)(2) of the Act provides, in pertinent part, that:

(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 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, that:

The Attorney General [Secretary of Homeland Security] 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...

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii)the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii)the alien has been rehabilitated; or

(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 established to the satisfaction of the [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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

On October 2, 2006, the applicant submitted an appeal to the AAO and requested 180 days to submit a brief and/or evidence to the AAO. *See Form I-290B*, filed October 2, 2006. The AAO notes that the record contains no evidence that a brief or additional evidence was filed within 180 days, and the appeal does not dispute or otherwise address the grounds upon which the applicant's Form I-601 was denied. *See id.*

On January 29, 2009, the AAO sent the applicant a request for certified court documents for all of his convictions. The AAO allowed the applicant 12 weeks to submit the requested documents; however, the applicant failed to respond to the request for evidence. Therefore, the AAO considers the applicant's waiver application to be abandoned.

8 C.F.R. § 103.3(a)(1) states in pertinent part that:

- (v) Summary dismissal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The AAO finds that the applicant's appeal fails to identify any erroneous conclusion of law or statement of fact in the District Director's decision. The appeal is therefore summarily dismissed.

ORDER: The appeal is summarily dismissed.