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



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: MIAMI, FL

Date: APR 19 2010

IN RE:

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 "Michael Shumway".

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States 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), for having been an illicit trafficker in 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 and reside with his U.S. citizen mother and child.

In a decision dated July 16, 2009, the field office director found that the applicant was inadmissible under section 212(a)(2)(C) for having been an illicit trafficker in a controlled substance. The field office director states that the applicant has been convicted of several serious crimes involving moral turpitude, that the negative factors outweigh the positive factors in his case, and that he has not shown extreme hardship to his qualifying relatives. The application was denied accordingly.

On appeal, counsel submits additional documentation in support of the applicant's case.

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.
- (C) Controlled Substance Traffickers - Any alien who the consular officer or 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, that:

- (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (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 -

...

- (1) (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 [now the Secretary of Homeland Security (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 . . . .

The record reflects that the applicant was convicted of Burglary of an Unoccupied Dwelling on February 22, 1995, Possession of Marijuana on August 28, 1996, and Attempted Armed Robbery, Carrying a Concealed Firearm, and Criminal Mischief on September 27, 1999. The AAO notes that the applicant's criminal record also makes him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

A charging document from the Circuit County Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida dated September 8, 1998 shows that the applicant was arrested and charged with Possession of Cocaine with Intent to Deliver under section 893.13(1A) of the Florida Statutes (Fla. Stat.) and Possession of Cocaine under Fla. Stat. § 893.13.

An arrest report dated September 8, 1998 states that the applicant was the accomplice of a crack cocaine dealer who delivered \$100 worth of crack cocaine to undercover police officers. The report states that the applicant drove the dealer to the site where the crack cocaine was delivered. Upon delivery of the crack cocaine, which the undercover officers paid for in marked U.S. currency, the applicant's car was stopped by police. The applicant was then searched and found to be in possession of the marked U.S. currency. After searching the applicant's car, the officers found a plastic bag containing several pieces of crack cocaine. The applicant was then arrested and charged with crimes stated above. The AAO notes that the record does not indicate how these charges were resolved.

The AAO notes further that on the applicant's Application to Register Permanent Resident or Adjust Status (Form I-485) dated June 5, 2002, the applicant first answered yes to the question about whether he has ever illicitly trafficked in a controlled substance, or knowingly assisted, abetted, or colluded in the illicit trafficking of any controlled substance. The applicant's Form I-485 seems to indicate that during his interview the applicant answered no to the question concerning the illicit trafficking of a controlled substance. However, no explanation was given for this discrepancy. The AAO notes that it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). If the U.S. Citizenship and Immigration Services (USCIS) fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Upon review, the record supports that the applicant is inadmissible under section 212(a)(2)(C)(i) of the Act, as there is "reason to believe" that the applicant has been an illicit trafficker in a controlled substance. In order for an applicant to be inadmissible under section 212(a)(2)(C) of the Act, the only requirement is that an immigration officer "knows or has reason to believe" that the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled, or endeavored to do so. Section 212(a)(2)(C) of the Act; *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9<sup>th</sup> Cir. 2000). In order for an immigration officer to have sufficient "reason to believe" that an applicant has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by "reasonable, substantial, and probative evidence." *Id.* (citing *Hamid v. INS*, 538 F.2d 1389, 1390-91 (9th Cir.1976)).

In the present matter, the record contains reasonable, substantial, and probative evidence that shows that the applicant knowingly assisted in the sale of crack cocaine to undercover police officers. This evidence includes the arrest report and the applicant's initial testimony in completing his Form I-485. The applicant does not contest on appeal his involvement in the sale of crack cocaine to undercover police officers.

Based on the foregoing, there is sufficient reason to believe that the applicant has been an illicit trafficker in a controlled substance, and he is inadmissible under section 212(a)(2)(C)(i) of the Act. There is no provision under the Act that allows for waiver of inadmissibility under section 212(a)(2)(C)(i) of the Act. For this reason, the appeal must be dismissed.

As the applicant is inadmissible for a waiver under section 212(a)(2)(C)(i) of the Act and no waiver is available for this inadmissibility, no purpose would be served in addressing his inadmissibility

under section 212(a)(2)(A)(i)(I) of the Act or his eligibility for a waiver under section 212(h)(1)(B) of the Act.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden, in that he has not established that a purpose would be served by adjudicating his eligibility for a waiver under section 212(h)(1)(B) of the Act due to his inadmissibility under section 212(a)(2)(C)(i) of the Act. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.