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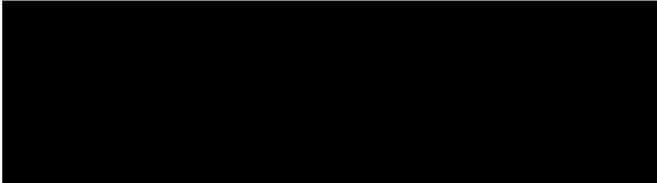
U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



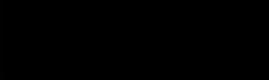
**U.S. Citizenship
and Immigration
Services**

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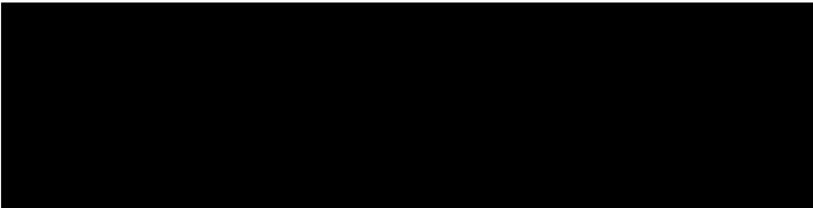
IN RE:

Applicant:



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

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).

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director of the Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant [REDACTED] is a native and citizen of Canada who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of possession of cannabis resin (hashish), a controlled substance. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), finding that a conviction for possession of cannabis resin (hashish) rendered the applicant statutorily ineligible to seek a waiver for inadmissibility. *Decision of the Director*, dated May 15, 2007.

On appeal, counsel asserts that the Miami District Office approved the applicant's waiver on January 12, 2004, based on the same facts presented to the Vermont Service Center. Counsel contends that the applicant's waiver was never revoked.

Counsel claims that an advisory opinion of the Office of the General Counsel and 21 U.S.C. § 802(16) define marijuana to include all parts of the cannabis plant, including hashish. Counsel contends that the Vermont Service Center erred in determining that due to his conviction in 1982 for possession of cannabis resin (hashish) in violation of section 3(1) of the Narcotic Control Act of Canada the applicant is not eligible to seek a section 212(h) waiver. Counsel asserts that the applicant was fined \$200 for his crime, even though the maximum punishment under the statute is seven years of imprisonment. Counsel states that the arresting agency in Canada destroys old arrest records, such as the applicant's, and that even though the court documents do not specify the quantity of cannabis resin that the applicant possessed, his punishment reflects the minor nature of his crime. Counsel claims that the evidence supports the applicant's eligibility for a waiver.

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 commit such a crime, or
 - (II) 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 February 21, 1983 the applicant was arrested and charged with possession of cannabis resin (hashish) in Canada. He was found guilty of the charge and was ordered to pay a fine of \$200 or serve 11 days in jail. Based on the record, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violation of law or regulation of a foreign country relating to a controlled substance.

A section 212(h) waiver applies to a controlled substance conviction “in so far as it relates to a single offense of possession of 30 grams or less of marijuana.” The applicant was convicted of possession of cannabis resin (hashish); however, the record before the AAO does not indicate the quantity he possessed. In order to be eligible for consideration for a waiver under section 212(h) of the Act, the applicant must establish that his possession of cannabis resin (hashish) was equivalent to 30 grams or less of marijuana.

In that the convicting record does not indicate the quantity of cannabis resin (hashish) possessed by the applicant, he has not established that his conviction “relates to a single offense of possession of 30 grams or less of marijuana.” Consequently, the applicant has not demonstrated his eligibility to seek a section 212(h) waiver. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he has established extreme hardship to his U.S. citizen wife or merits the waiver as a matter of discretion.

On appeal, counsel asserts that the applicant was granted a section 212(h) waiver. The AAO notes that the record shows that the waiver application approved on January 12, 2004 was based on an adjustment of status application filed by the applicant on June 27, 2000. The decision of the District

Director, Miami, Florida, dated January 21, 2004, conveys that the adjustment application was terminated on January 21, 2004 due to abandonment, and the approved waiver application was terminated.

Although the applicant's first waiver application was approved, it was done so in error. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that U.S. Citizenship and Immigration Services (USCIS) or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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.