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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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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 22 2010**

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California 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 Mexico 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 having been convicted of a crime involving 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 concluded that the applicant had failed to establish that he qualified for the waiver, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director, dated July 24, 2007.*

On appeal, counsel states that the police report submitted on appeal indicates that the applicant possessed an amount of marijuana presumed to be less than 33 grams and that the marijuana was for the applicant's personal use. Counsel states that further efforts to determine the exact quantity as determined by the Bellaire Police Department are underway and, if successful, will be provided upon receipt.

The AAO will first address the finding of inadmissibility.

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)(II) . . . 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 Judgment dated January 13, 1986, conveys that the applicant was found guilty of "Possession of Marijuana 0 oz. to 2 oz. as charged in the information." The incident report dated January 12, 1986 and submitted on appeal conveys that the applicant "possessed a clear plastic bag containing green leafy substance." The intake field report, also submitted on appeal, states that he was charged with "possession of marijuana – less than two ounces." This conviction renders the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act, U.S.C. § 1182(a)(2)(A)(i)(II).

A section 212(h) waiver applies to controlled substance cases that involve a single offense of possession of 30 grams or less of marijuana. Thirty grams is equivalent to 1.05 ounces. Because the record of conviction does not establish that the applicant's controlled substance conviction involved a single offense of simple possession of 30 grams or less of marijuana, the applicant is not eligible for a waiver under section 212(h) of the Act. The applicant is therefore statutorily ineligible for a waiver. This conviction renders the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act, U.S.C. § 1182(a)(2)(A)(i)(II).

**ORDER:** The appeal is dismissed.