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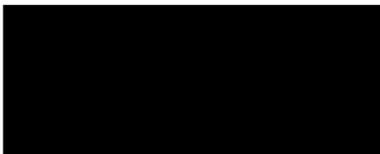
U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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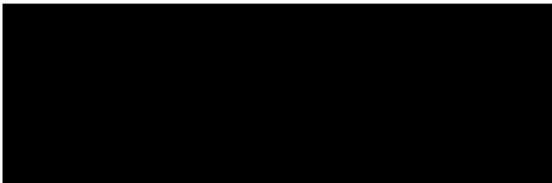


FILE: [REDACTED] Office: ALBANY, NY Date: JUL 13 2010

IN RE: Applicant: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant, Mr. Naim Saati, is a native and citizen of Israel 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; and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i). 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 Field Office Director*, dated September 27, 2007.

On appeal, counsel asserts that the applicant's wife would suffer extreme hardship if the applicant returns to Israel because their business would collapse and the applicant's could not continue her studies in law school. Counsel maintains that it will be dangerous for the applicant's wife to live in Israel. The AAO notes that the letter by the applicants' spouse dated January 29, 2010, conveys that she will graduate from law school in May and that they are considering starting a family.

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 applicant was convicted of possession of hashish and cannabis. The facts in the statement of indictment by the State of Israel Prosecutions Division at the Jerusalem District convey the following:

1. On April 22, 2002, at around 22:00, on [REDACTED] in Jerusalem, [the applicant] unlawfully held in his jacket pocket a dangerous narcotic, type hashish, with the net weight of 1.61 grams, further unlawfully held in his pants pocket 1 gram of a dangerous narcotic, cannabis type, with a net weight of 1.44 grams. [The applicant] further unlawfully held a dangerous narcotic, hashish type, with a net weight of 0.59 grams, which he threw out of the vehicle in which he was traveling.
2. In the same circumstances, [the applicant] unlawfully supplied [Nissim Tzuna] with a dangerous narcotic, type hashish, with the net weight of 5.72 grams. The narcotic was held by [REDACTED] under the chair by the driver in the vehicle of [the applicant.]

On October 22, 2003, in his plea bargain the applicant conceded to the facts of the indictment. He was convicted of possession or use of a dangerous narcotic in accordance with Article 7(A) and the latter part of (C) of the Dangerous Narcotics Ordinance [Revised], 5733-1973. He received a suspended sentence of six months, which term would not be served unless he committed within three years any offense in accordance with the Dangerous Narcotics Ordinance [Revised], 5733-1973, with the exception of the offense of possession for personal use only. 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 relate to a single offense of possession of 30 grams or less of marijuana. The record shows that the applicant was convicted of possession of hashish with the net weight of 1.75 grams and 1 gram of cannabis with a net weight of 1.44 grams. Furthermore, it shows that he had possessed the hashish weighing 5.72 grams that he

supplied to N [REDACTED]. Thus, we find that the applicant had, prior to supplying hashish to [REDACTED] possession of 7.47 grams of hashish. The drug equivalency of 1 gram of marihuana/cannabis (granulated or powdered) is 1 gram of marihuana, and 1 gram of hashish is equivalent to 5 grams of marihuana. *See United States Sentencing Commission Supplement to the 2000 Guidelines Manual*, dated May 1, 2001, Drug Equivalency Table. In order to be eligible for consideration for a waiver under section 212(h) of the Act, the applicant must establish that his conviction was for the drug equivalency of 30 grams or less of marijuana. The applicant has not demonstrated that his conviction for possession of cannabis and hashish meets the requirement of being a single offense of simple possession of 30 grams or less of marijuana. The applicant was convicted of possession of 2.2 grams of hashish and 1.44 grams of cannabis, and he supplied [REDACTED] with 7.47 grams of hashish. The drug equivalency of 1 gram of hashish is 5 grams of marihuana. The applicant would be eligible for consideration of the 212(h) waiver based on his conviction of 2.2 grams of hashish and 1.44 grams of cannabis. However, when the hashish that the applicant supplied to [REDACTED] which was 7.47 grams, is added to the additional amount of hashish possessed by the applicant, he is no longer eligible for the section 212(h) waiver in that he possessed the equivalency of 49.79 grams of marijuana.

Upon review, the record may also support a finding 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. *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9th 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)).

The applicant conceded to the facts of the indictment, which stated that the applicant unlawfully supplied 7.47 grams of hashish to [REDACTED]. This evidence substantiates that the applicant engaged in an offense, that of supplying hashish to [REDACTED] that renders him inadmissible under section 212(a)(2)(A)(i) of the Act. It is the applicant's burden to prove eligibility, and this burden includes the burden of producing relevant criminal records. *See* section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 103.2(b).

Furthermore, it is noted that an applicant may be deemed inadmissible under section 212(a)(2)(C)(i) of the Act even where there has been no admission and no conviction, so long as there is "reason to believe" that the applicant engaged in the proscribed conduct relating to trafficking in a controlled substance. In the present matter, there is reason to believe that the applicant has been an illicit trafficker in a controlled substance. Specifically, there is reasonable, substantial, and probative evidence to support the belief that he has been an illicit trafficker in a controlled substance. *See Alarcon-Serrano v. I.N.S.* at 1119.

Based on the foregoing, we find that 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.

ORDER: The appeal is dismissed.