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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
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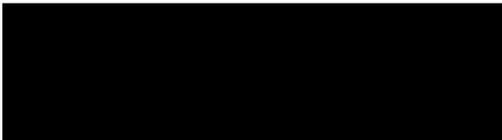
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FILE: [REDACTED] Office: EL PASO, TX Date: MAY 05 2010

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the
Immigration and Nationality Act (the Act), 8 U.S.C. section 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, 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 District Director, El Paso, Texas and the application is now before the AAO on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 is the spouse and father of U.S. citizens. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his family.

The District Director concluded that the applicant was not eligible to apply for a waiver under section 212(h) of the Act, and denied the Application for Waiver of Grounds of Excludability (Form I-601) on March 11, 2005.

On appeal, counsel for the applicant contends that record indicates the applicant is eligible to apply for a waiver under section 212(h) of the Act. In support of the appeal, counsel has submitted two court documents and a statement from the District Clerk, El Paso County, Texas.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) [A]ny 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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
 - (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:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (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—
 - (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 [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 on October 19, 1972 of Possession of Marijuana in the 34th Judicial District Court, El Paso County, Texas and was sentenced to two years in the state penitentiary. In addition, the applicant was convicted of Possession of Marijuana on December 17, 1973 in the 34th Judicial District Court, El Paso County, Texas, given a suspended sentence of six months and placed on probation.

Inadmissibility under section 212(a)(2)(A)(i)(II) of the Act may be waived only as it relates to a *single* offense of simple possession of 30 grams or less of marijuana. The applicant in this matter has twice been convicted for possession of marijuana and he is, therefore, ineligible for waiver consideration under section 212(h). Having found that a waiver is not available to the applicant in the present case, no purpose would be served in determining whether the record establishes that his spouse or children would suffer extreme hardship, as required for waiver approval under section 212(h) of the Act. Accordingly, the appeal will be dismissed.

In proceedings for an application for 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.

ORDER: The appeal is dismissed.