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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

Date: AUG 02 2011 Office: CIUDAD JUAREZ FILE: CJS 1992 623 926

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), (h)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 $630. 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,

Michael Shumway

b/ Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of his last departure, and under section 212(a)(2)(A)(i)(II) of 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 seeks waivers under sections 212(a)(9)(B)(v) and 212(h) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), (h), in order to remain in the United States.

The field office director concluded that the applicant failed to establish extreme hardship to a qualifying relative, or that he is otherwise eligible for waivers under sections 212(a)(9)(B)(v) and 212(h) of the Act. *Decision of the Field Office Director*, dated April 2, 2009.

On appeal, the applicant's father asserts that the applicant and his family members are experiencing hardship due to the applicant's absence from the United States. *Statement from the Applicant's Father on Form I-290B*, dated April 27, 2009.

The record contains, but is not limited to: statements from the applicant, as well as the applicant's father, son, and pastor; a letter from a physician for the applicant's mother; and documentation relating to the applicant's criminal history. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

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

> 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) or 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 . . . .

The record reflects that on May 29, 1996, the applicant plead guilty to a charge under Colorado Revised Statutes 18-18-405(2)(d)(I) for Possession/Sale of a Schedule V Controlled Substance. He was sentenced to 27 days of incarceration. At the time of the applicant's conviction, Schedule V Controlled Substances in Colorado were identified by Colorado Revised Statutes 18-18-207 as follows:

(1) A substance shall be added to schedule V by the general assembly when:

(a) The substance has a low potential for abuse relative to substances included in schedule IV;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) The abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in schedule IV.

(2) Unless specifically excepted by Colorado or federal law or Colorado or federal regulation or more specifically included in another schedule, the following controlled substances are listed in schedule V:

(a) Any material, compound, mixture, or preparation containing any of the following narcotic drug and its salts: Buprenorphine;

(b) Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in this paragraph (b), which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(I) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(II) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(III) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(IV) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(V) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(VI) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

(I) Pyrovalerone.

The applicant's conviction for Possession/Sale of a Schedule V Controlled Substance renders him inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of violating a law relating to a controlled substance. Marijuana is not listed as a Schedule V Controlled Substance in Colorado, thus the applicant's conviction under Colorado Revised Statutes 18-18-405(2)(d)(I) did not "relate[] to a single offense of simple possession of 30 grams or less of marijuana." Section 212(h) of the Act. There is no provision under the Act that allows for a waiver of inadmissibility when an applicant has been convicted of a controlled substance offense other than one that relates to a single offense of simple possession of 30 grams or less of marijuana. Therefore, the applicant is

statutorily ineligible for a waiver of his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, and the present waiver application may not be approved.

Based on the foregoing, no purpose would be served in assessing the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence, determining whether he has shown that his qualifying relatives will suffer extreme hardship, or assessing whether he warrants a favorable exercise of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Act, the burden of establishing eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met that burden.

ORDER: The appeal is dismissed.