

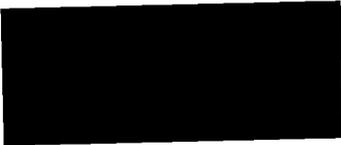
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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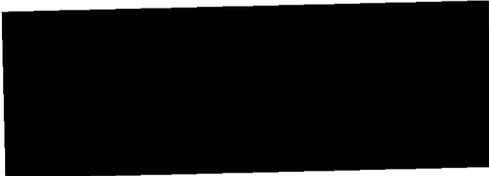
Office: PROVIDENCE, RI

FILE: 

IN RE: 

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

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 \$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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Providence, Rhode Island and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom 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 committed crimes involving moral turpitude and controlled substance violations. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse.

In a decision, dated July 13, 2009, the field office director found that the documentation submitted with the applicant's waiver application was similar to the applicant's originally filed waiver application which was denied on May 22, 2006. The field office director concluded that as no new documentation had been submitted, the applicant's current waiver application would also be denied.

In a Notice of Appeal to the AAO (Form I-290B), dated August 11, 2009, counsel states that the field office director abused her discretion and erred as a matter of fact and law when she denied the applicant's waiver application. He states that the applicant has shown that his U.S. citizen spouse would suffer extreme hardship as a result of the applicant's inadmissibility.

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

- (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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
 - (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:

The Attorney General [Secretary of Homeland Security] 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

- (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 indicates that the applicant has a record of eight convictions, including pleading guilty to three counts under the Misuse of Drugs Act (1971) in Scotland. The record indicates that from the years 1989 to 1993 the applicant was convicted of the following offenses: two counts of assault, one count of assault to severe injury, and two counts of shoplifting.

On September 4, 1995, the applicant pled guilty to three counts of violating section 5(2) of the Misuse of Drugs Act (1971).

Section 5(2) of the Misuse of Drugs Act (1971) states, in pertinent part:

Restriction of possession of controlled drugs.

- (1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.
- (2) Subject to section 28 of this Act, it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 4(1) of this Act.

The record does not indicate the type or amount of drug possessed by the applicant, and the applicant has not disclosed this information. However, the applicant also has not disputed the director's finding that he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act. It is the applicant's burden to demonstrate admissibility, or that he is eligible for a waiver of any inadmissibility. Therefore, for purposes of this appeal, we will presume that the applicant's convictions are associated with controlled substances listed in section 102 of the Controlled Substances Act (21 U.S.C. 802), rendering him inadmissible under section 212(a)(2)(A)(i)(II) of the Act. Thus, the AAO concurs that the applicant has three convictions for possession of a controlled substance. A section 212(h) waiver of section 212(a)(2)(A)(i)(II) inadmissibility is only available for a single offense relating to simple possession of 30 grams or less of marijuana. Even if each of the applicant's convictions involved 30 grams or less of marijuana, as he has been convicted of three separate offenses, he is not eligible for a waiver.

As there is waiver available for the applicant's inadmissibility under 212(a)(2)(A)(i)(II) of the Act, no purpose would be served in discussing his inadmissibility under 212(a)(2)(A)(i)(I) of the Act, or waiver of this inadmissibility.

In proceedings for 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. Accordingly, the appeal will be dismissed.

[REDACTED]

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ORDER: The appeal is dismissed.