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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**

tr

[REDACTED]

FILE: [REDACTED] Office: NEWARK, NJ Date:

FEB 25 2011

IN RE: [REDACTED]

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:

[REDACTED]

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

The applicant is a native and citizen of Peru 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 violation of a law related to a controlled substance. The applicant has three U.S. citizen daughters. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The field office director concluded that there is no waiver for the applicant's ground of inadmissibility. *Decision of the Field Office Director*, at 2, dated July 9, 2007.

On appeal, the applicant's oldest daughter asserts that the applicant's charge was expunged, the applicant has been a good father to her and her sisters, and he was diagnosed with a terminal disease. *Applicant's Oldest Daughter's Statement*, at 1, dated August 3, 2007.

The record includes, but is not limited to, the applicant's Form I-290B, his daughter's statement and his criminal record.

The record reflects that on July 9, 1984 the applicant was convicted under former N.J.S.A. 24:21-20 of Possession of Controlled Dangerous Substance in Newark, New Jersey. The record reflects that the controlled substance was cocaine.

As such, the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1181(a)(2)(A)(i)(II), which states:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

....

(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... is inadmissible.

Section 212(h) of the Act provides that:

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...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...

Only individuals convicted of possessing 30 grams or less of marijuana are eligible to apply for a waiver of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act. Therefore, the applicant is statutorily ineligible for a waiver of his inadmissibility pursuant to section 212(a)(2)(A)(i)(II) of the Act and the AAO finds no purpose would be served in discussing whether he is eligible for a section 212(h) waiver. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.