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



**U.S. Citizenship
and Immigration
Services**

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FILE:

Office: PORTLAND, ME

Date:

JAN 25 2011

IN RE:

Applicant:

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,

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Vietnam who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i). The applicant is the son of lawful permanent residents and the father of two U.S. citizens. He 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.

The Field Office Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's decision*, dated January 16, 2009.

On appeal, counsel states that additional documentation relating to the issue of hardship will be submitted within 30 days. *Form I-290B, Notice of Appeal or Motion*, dated February 13, 2009.¹ On January 18, 2011, having found no additional documentation included in the record, the AAO requested that counsel resubmit any previously-provided evidence within five business days. *AAO Facsimile Transmission*, dated January 18, 2011.

In support of the application, the record contains, but is not limited to, birth certificates for the applicant's children; proof of the applicant's child support payments; and court records documenting the applicant's criminal history. The entire record was reviewed and all relevant information considered in arriving at a decision on the appeal.

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

¹ Counsel has also appealed the Field Office Director's denial of the Form I-485, Application to Register Permanent Residence or Adjust Status. The AAO will reject that Form I-290B, dated July 22, 2008, in a separate decision, as we do not have jurisdiction over an appeal from the denial of a Form I-485 adjustment application filed under section 245 of the Act. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).

Section 212(h) of the Act provides, in pertinent part, 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 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 the applicant has twice, on December 28, 1998 and July 7, 2006, been convicted of possession of marijuana under 22 Maine Revised Statutes (MRS) § 2383.1, a civil offense under Maine's Health and Welfare Code. For these offenses, he was fined \$200 and \$350 respectively. Although it appears that the applicant's offenses were civil rather than criminal, the AAO notes that inadmissibility under section 212(a)(2)(A)(i)(II) results from a violation of any U.S., state or foreign law or regulation relating to a controlled substance.

A waiver of a 212(a)(2)(A)(i)(II) inadmissibility is available only to those individuals who have been convicted of a single offense of simple possession of 30 grams or less of marijuana. In the present matter, the applicant has two convictions for possession of marijuana and is, therefore, statutorily ineligible for a waiver of his inadmissibility.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The Field Office Director noted that the applicant has two controlled substance violations and that a waiver of inadmissibility is available only for a violation related to a single offense, but nonetheless considered whether the applicant warranted a waiver of inadmissibility under the extreme hardship standard. Having found the applicant to be ineligible for a 212(h) waiver, the AAO concludes that no purpose would be served by reviewing any additional evidence that may be submitted by counsel in support of the applicant's waiver application or in considering whether a qualifying relative would suffer extreme hardship as a result of his inadmissibility. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.