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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**



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762

Date: **JUL 06 2011** Office: CHARLOTTE FILE:

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, Charlotte, North Carolina, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

The applicant is a native and citizen of Jordan who was found to be inadmissible to the United States pursuant to 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. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and children.

The field office director found that the applicant was statutorily ineligible for a waiver, as he was convicted of controlled substance violation that was not related to simple possession of 30 grams or less of marijuana. *Decision of the Field Office Director*, dated February 9, 2009.

On appeal, counsel for the applicant asserts that the applicant was convicted of a disorderly conduct offense, not an offense relating to a controlled substance, and that his conviction was not for a crime involving moral turpitude that might otherwise serve as a basis for inadmissibility. *Brief from Counsel*, submitted March 9, 2009.

The record contains, but is not limited to: a brief from counsel; documentation relating to the applicant's criminal conviction; and documentation relating to hardship the applicant's family members would face should his waiver application be denied. The entire record was reviewed and considered in rendering this decision.

The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, with the U.S. Citizenship and Immigration Services (USCIS) Charlotte, North Carolina Field Office on or about February 27, 2003. The application was denied on June 24, 2006 due to a finding that the applicant was inadmissible under section 212(a)(2)(A)(i)(II) of the Act. On or about March 5, 2008, the applicant filed the present Form I-601, Application for Waiver of Grounds of Inadmissibility, with the USCIS Charlotte, North Carolina Field Office seeking a waiver of his inadmissibility.

The applicant indicated on Form I-601 that he departed the United States in or about December 2006, and he currently resides in Irbid, Jordan. His Form I-485 application had already been denied. His departure from the United States removed him from the jurisdiction of the Charlotte Field Office and rendered any efforts to reopen his Form I-485 application moot. As the present Form I-601 application was filed incident to the Form I-485 application that was before the Charlotte Field Office, the waiver application is also moot. For this reason, the appeal must be dismissed.

Upon review, the AAO also finds that the applicant is not inadmissible under section 212(a)(2)(A)(i)(II) of the Act. On March 15, 1996, the applicant was charged with possession of marijuana under 30 grams pursuant to New Jersey Statutes § 2C:35-10A(4). The applicant pled guilty to a lesser charge. The records of the applicant's conviction contain conflicting indications of the section of law to which he pled. The complaint indicates that he pled to a charge under New Jersey Statutes § 2C:33-2.1A. However, as correctly noted by counsel, while New Jersey Statutes §

2C:33-2.1 in its entirety addresses loitering for the purpose of illegally using, possessing or selling a controlled substance, section 2C:33-2.1A is limited to defining the term "place" as used in section 2C:33-2.1. Thus, section 2C:33-2.1A does not identify a criminal offense and the reference to this section in the applicant's conviction documents was in error.

In subsequent records associated with the applicant's conviction, it is noted that the section of law under which he was charged was amended to New Jersey Statutes § 2C:33-2A. This indication is contained in the most recent record associated with the applicant's conviction, a Final Order of Expungement of Records issued by the Superior Court of New Jersey, Law Division, Hudson County, on February 26, 2008. At the time of the applicant's conviction, New Jersey Statutes § 2C:33-2A stated:

2C:33-2. Disorderly conduct

a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he

(1) Engages in fighting or threatening, or in violent or tumultuous behavior; or

(2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

New Jersey Statutes § 2C:33-2A refers to proscribed conduct, and the AAO is persuaded that the applicant in fact pled guilty to a charge under this section, and the references to section 2C:33-2.1A were in error. As New Jersey Statutes § 2C:33-2A does not describe offenses that relate to a controlled substance, the applicant is not inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

However, further analysis is required to determine if the applicant's conviction under New Jersey Statutes § 2C:33-2A constitutes a conviction for a crime involving moral turpitude which would render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. It is noted that, if the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, he should be considered for a waiver under section 212(h)(1)(A) of the Act, as the conduct for which he was convicted occurred over 15 years ago.

Based on the foregoing, the appeal must be dismissed, as the Form I-601 application for a waiver is moot.

**ORDER:** The appeal is dismissed as the waiver application is moot.