

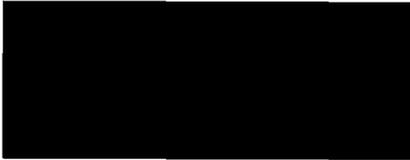
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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: JUL 22 2011 Office: TEGUCIGALPA, HONDURAS

FILE: [REDACTED]

IN RE: Applicant [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:

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua 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 violating a law related to controlled substance. The applicant's mother is a U.S. citizen and he seeks a waiver of inadmissibility in order to reside in the United States.

The field office director concluded that the applicant failed to provide documentation relating to previous arrests and therefore failed to meet his burden of proof and establish that he was not inadmissible to the United States. The application was denied accordingly. *Decision of the Field Office Director*, dated December 15, 2008.

On appeal, the applicant details the hardship his mother would experience if he was not admitted to the United States. *Form I-290B*, received January 9, 2009.

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

The record reflects that the applicant was arrested by the El Paso Police Department on or around December 16, 1988 and was charged with delivery of marijuana 0/200 lbs. The AAO issued a Notice of Intent to Deny, dated May 18, 2011, in which it requested information related to the disposition of this arrest, whether the applicant pled guilty and/or was convicted, the actual quantity of marijuana delivered (if applicable), the statute he pled guilty and/or was convicted under (if applicable) and the sentence he received (if applicable). The AAO specifically requested documents that would clarify the record regarding the applicant's arrest, such as the arrest report, and if applicable, the indictment, judgment of conviction, jury instructions, signed guilty plea or the plea transcript from the case, and any additional evidence deemed necessary or appropriate to clarify the record. The applicant responded to the Notice of Intent to Deny with a letter. In the letter, the applicant states that he was a journalist who accepted a ride to Mexico from two Mexican officers; El Paso police found marijuana in the trunk of their car; he was not involved in any wrongdoing; the police set him free; he is not aware of any additional legal proceedings related to this incident; nothing has been proven in a court of law; and his innocence should be presumed. *Applicant's Letter*, dated June 12, 2011. An arrest report, or evidence that the arrest report is unavailable, was not included in the response.

Section 212(a)(2)(A)(i)(II) of the Act 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**

The AAO notes that the burden of proof is on the applicant to establish that he is not inadmissible to the United States. As noted above, though specifically requested to do so, the applicant failed to provide any documentation relating to the disposition of his December, 1988 arrest and charge of delivery of marijuana 0/200 lbs. Without such documentation, or evidence that such documentation is unavailable, the AAO finds that the applicant has failed to establish that he is not inadmissible to the United States inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act. The AAO notes that only individuals convicted of possessing less than 30 grams of marijuana are eligible to apply for a waiver of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act. As the charge at issue is delivery of marijuana 0/200 lbs., the applicant has not established that he is statutorily eligible for a waiver of inadmissibility pursuant to section 212(h) of the Act.

In addition, section 212(a)(2)(C)(i) of the Act states:

Any alien who the consular officer or the Attorney General [now Secretary] knows or has reason to believe

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so...is inadmissible.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Field Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). The AAO notes again that the burden of proof is on the applicant to establish that he is not inadmissible to the United States.

In the Notice of Intent to Deny issued on May 18, 2011, this office noted that the record includes a U.S. Department of Justice, Immigration and Naturalization Service, Report of Investigation, dated September 21, 1987, which details the distribution and sale of cocaine within Montana by certain individuals. The applicant is one of the individuals named in the report. Specifically, in regard to the applicant, the report states that on April 26, 1986 an individual requested a money transfer of \$5,000 cash to the applicant; on September 15, 1986 the applicant arrived in Billings, Montana and rented an expensive apartment; on December 1, 1986 the applicant disconnected his telephone in Billings, Montana and returned to the Boca Raton or Miami, Florida area; and on February 18, 1987 another individual transported cocaine from Miami, Florida to Billings, Montana for a third individual and the applicant. The AAO requested evidence that would clarify the record regarding the applicant's involvement in the four specific activities mentioned and any other involvement he may have had with the distribution and sale of cocaine within Montana. In response, the applicant stated that it should not be inferred that he was involved in wrongdoing simply because he is a Nicaraguan citizen and others named in the investigation report were also Nicaraguan citizens; that this is the first time he had knowledge of the report; that he can "barely remember the details about what happened in this case;" and that he was not indicted as a result of the investigation and therefore his innocence should be presumed.

Upon review, the record supports that the applicant is inadmissible under section 212(a)(2)(C)(i) of the Act, as there is "reason to believe" that the applicant has been an illicit trafficker in a controlled substance. Although the applicant states that he was not convicted of a drug trafficking crime, in *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977), the Board of Immigration Appeals held that an actual conviction of a drug-trafficking offense or violation is not necessary to establish the ground of inadmissibility under section 212(a)(2)(C) of the Act. In order for an applicant to be inadmissible under section 212(a)(2)(C) of the Act, the only requirement is that an immigration officer "knows or has reason to believe" that the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled, or endeavored to do so. Section 212(a)(2)(C) of the Act; *Alarcon-Serrano v. I.N.S.*, 220 F.3d 11 16, 11 19 (9<sup>th</sup> Cir. 2000). In order for an immigration officer to have sufficient "reason to believe" that an applicant has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by "reasonable, substantial, and probative evidence." Id. (citing *Humid v. INS*, 538 F.2d 1389, 1390-9 1 (9<sup>th</sup> Cir. 1976)).

In the present matter, the record contains reasonable, substantial, and probative evidence in the form of the Report of Investigation which details the applicant's involvement in the distribution and sale of cocaine as outlined above. The applicant has not denied his involvement but instead has stated that he can "barely remember the details about what happened."

In addition, as discussed above, the record shows that the applicant was arrested by the El Paso Police Department on or around December 16, 1988 and was charged with delivery of marijuana 0/200 lbs.

The AAO finds that it has reason to believe that the applicant was a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking of a controlled substance. The AAO thus finds that the applicant is statutorily inadmissible under section 212(a)(2)(C) of the Act.

Based on the two findings of inadmissibility without the possibility of waivers, the AAO will not address any other potential grounds of inadmissibility. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.