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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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FILE: [REDACTED]

Office: EL PASO

Date:

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IN RE: [REDACTED]

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

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,

*Michael Shumway*

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Interim District Director (“director”), El Paso, Texas. 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 Mexico who was found to be inadmissible to the United States pursuant to: section 212(a)(2)(C) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(2)(C), as a controlled substance trafficker; section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for violating a law relating to a controlled substance; and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having willfully misrepresented a material fact. The applicant seeks waivers of inadmissibility in order to reside in the United States with her children.

The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) based on a finding that the applicant is ineligible for a section 212(h) waiver of inadmissibility arising under section 212(a)(2)(A) of the Act. *I-601 Denial*, dated June 24, 2004.

On appeal, counsel asserts, “No concrete evidence has been presented to indicate that ‘La Mague’ was ever involved in drug dealing. The only information comes from a scandalous and unreliable Juarez, Mexico newspaper.” *Statement on the Form I-290B, Notice of Appeal*, dated July 23, 2004.

The applicant has been found inadmissible under sections 212(a)(2)(A), 212(a)(2)(C) and 212(a)(6)(C) of the Act. We will first address the director’s finding of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, for having committed a crime related to a controlled substance.

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

- (A) Conviction of certain crimes. –
  - (i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . .
  - (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.

Upon review of the record, the AAO concludes that a finding of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act cannot be sustained. Although the record contains original newspaper clippings stating that the applicant was convicted of the distribution of controlled substances, there are no corresponding conviction records contained in the file. While the applicant admitted in a sworn statement that she sold “pep pills,” such an admission does not meet the standard for

determining the validity of an admission under section 212(a)(2)(A)(i) of the Act. *See Record of Sworn Statement*, dated August 18, 1967.

In *Matter of K-*, 7 I&N Dec. 594 (BIA 1957), the Board of Immigration Appeals (BIA) established a standard for determining the "validity" of an admission for purposes of inadmissibility under section 212(a)(2)(A)(i) of the Act (formerly section 212(a)(9)). The BIA held that a "valid admission of a crime for immigration purposes requires that the alien be given an adequate definition of the crime, including all essential elements, and that it be explained in understandable terms," a rule intended to insure "that the alien would receive fair play and to preclude any possible later claim by him that he had been unwittingly entrapped into admitting the commission of a crime involving moral turpitude." *Id.* at 597. It is further noted that the BIA held that the admission at issue in that case, which was made to a police officer and included in a sworn statement signed by the alien, could not be considered an admission of acts constituting the essential elements of a crime involving moral turpitude because the notification requirement had not been met. *Id.* at 596-97.

In the present case, the applicant admitted to being arrested twice for selling "pep pills," to an Immigration and Naturalization Service (INS) investigator during an interview. *Record of Sworn Statement*, dated August 18, 1967. The applicant's admission was contained in a sworn statement signed by the applicant. *Id.* However, there is no evidence showing that she was provided with an adequate definition of any crime, including all essential elements, in understandable terms by the INS investigator or by anyone else at that or at any other time. The director does not specify in his decision a statute or law for which the acts admitted to by the applicant constitute a violation. Therefore, we find that the evidence in the record is insufficient to support a finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, and this part of the director's decision must be withdrawn from the record.

Nevertheless, we find that the evidence in the record affirms the director's finding of inadmissibility under section 212(a)(2)(C) of the Act, which contains an evidentiary standard distinct from section 212(a)(2)(A)(i) of the Act.

Section 212(a)(2)(C) of the Act provides, in pertinent part, that:

Controlled Substance Traffickers - Any alien who the consular officer or the Attorney General 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.

The phrase "any illicit trafficking in any controlled substance" includes any unlawful trading or dealing in any controlled substance. *Matter of Davis*, 20 I&N Dec. 536, 541 (BIA 1992). In *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977), the BIA determined that an alien was inadmissible to the

United States because he attempted to smuggle 162 pounds of marijuana into the United States. The BIA concluded that in light of the large quantity of marijuana involved, it was not intended for personal use, and the alien was an illicit trafficker as contemplated by the statute. *Id* at 186. Similarly, in *Matter of P-*, 5 I&N Dec. 190, 192 (BIA 1953), the BIA concluded that an illicit trafficker in controlled substances is a person who purchases or possesses any controlled substance for purposes of resale in the United States.

A conviction is not required to sustain a charge under section 212(a)(2)(C) of the Act, as a finding of inadmissibility can be based on an adjudicator's "reason to believe." In *Matter of Rico*, the BIA noted that a finding of excludability must be based upon "reasonable, substantial, and probative evidence." 26 I&N Dec. at 185; *see also Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9<sup>th</sup> Cir. 2000)(stating that a "reason to believe" an alien has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) must be supported by "reasonable, substantial, and probative evidence."). Conversely, it is the applicant's burden to establish that she is not inadmissible under section 212(a)(2)(C) of the Act, by reasonable, substantial, and probative evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361.

Upon review, the record supports that there is "reason to believe" that the applicant has been an illicit trafficker in controlled substances. In the denial of the applicant's Application for Status as a Permanent Resident (Form I-485), the director noted, "Service records contain newspapers clippings from [REDACTED] describing conviction and sentencing of [REDACTED], also known as [REDACTED] for violations involving distribution of pills and further indicating that the pills were Benzedrine and Seconal." *I-485 Denial*, dated April 9, 2004. The AAO has reviewed the original newspaper clippings contained in the file and finds that the record supports a determination that the applicant was convicted and sentenced in Mexico for distributing controlled substances.

On appeal, counsel asserts, "No concrete evidence has been presented to indicate that [REDACTED] was ever involved in drug dealing. The only information comes from a scandalous and unreliable Juarez, Mexico newspaper." The AAO observes that the director's finding of inadmissibility was the result of not only the information gained from newspaper clippings, but also the applicant's sworn statement, which is contained in the file. The record reflects that on August 18, 1967, the applicant was interviewed by the investigations branch of the El Paso, Texas, Immigration and Naturalization Service. During the interview, the applicant admitted that she is known as [REDACTED] and was arrested twice for selling "pep pills." She testified that the first time was in 1965 and the second time was eight months prior to the interview. The applicant stated that she "had a boy who sold them [the pills] on the street." *Record of Sworn Statement*, dated August 18, 1967.

The AAO notes that on appeal the applicant claims that the controlled substances belonged to her now deceased son, who was eighteen years old at the time. She contends, "Since this drug belonged to my son and the drug was at my home, I was arrested and put in the Juarez jail for approximately three weeks." *Affidavit of [REDACTED]*, dated April 26, 2004. Counsel further contends that the applicant "did admit that the drug was hers only to avoid the arrest of her son." *Counsel's Brief*, dated November 23, 2004. While the applicant's assertions are valuable and have been considered, they can only be given little weight because they are not supported by documentary evidence. Going

on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based on the newspaper reports detailing the applicant's arrest and conviction for distributing controlled substances as well as the applicant's written admission that she sold controlled substances, the AAO finds that the record contains reasonable, substantial, and probative evidence of her drug-trafficking activities. Accordingly, we affirm the director's finding that the applicant is inadmissible under section 212(a)(2)(C) of the Act. There is no waiver available for inadmissibility under section 212(a)(2)(C) of the Act.

The AAO notes that the director also found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having willfully misrepresented a material fact to procure admission into the United States. The director stated:

On February 25, 2004, you and your daughter, the petitioner, appeared for an interview on your application before an officer of the Service. At that time, you testified that you had never had any problems with the law either in Mexico or in the United States and you denied several times that you had ever been a trafficker in any controlled substance. . . . Since at your interview you provided false and misleading information material to your application, you are inadmissible under section 212(a)(6)(C)(i) of the Act.

*I-485 Denial Notice*, dated April 9, 2004.

A waiver of inadmissibility under section 212(i) of the Act of the ground of inadmissibility arising under section 212(a)(6)(C)(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. However, even if the AAO found extreme hardship to the applicant's qualifying relatives, as required for a section 212(i) waiver, she would nevertheless be inadmissible under section 212(a)(2)(C) of the Act, for which there is no waiver available. No purpose is served in adjudicating a waiver application where, as in this case, an adjustment of status application cannot be approved because of a separate non-waivable ground of inadmissibility. Accordingly, the AAO finds that the applicant is statutorily ineligible for a waiver, and the waiver application must be dismissed as moot.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has failed to establish that she is eligible for a Form I-601 waiver of inadmissibility. The appeal will therefore be dismissed and the Form I-601 will be denied.



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**ORDER:** The appeal is dismissed.