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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**

PUBLIC COPY



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Date: **MAY 25 2011** Office: HARLINGEN

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, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom who was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude, and 212(a)(2)(A)(i)(II), 8 U.S.C. 1182(a)(2)(A)(i)(II), for having been convicted of possession of a controlled substance. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse.

On April 22, 2005, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The director determined that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 31, 2008.

On appeal, counsel asserts that the director “failed to give meaningful consideration to the professional, personal, and financial hardship” to the applicant’s spouse. Counsel further asserts that the director “failed to take into consideration the fact that the arrests and convictions . . . occurred between 1984 and 1995” and the applicant “is now fully rehabilitated.” *Appeal Brief*, undated.

The AAO conducts the final administrative review and enters the ultimate decision for U.S. Citizenship and Immigration Services on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. See *Helvering v. Gowran*, 302 U.S. 238, 245-246 (1937); see also, *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003).

Section 212(a)(2) 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 –
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
 - (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. . . .

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

The record contains a criminal history report from the National Identification Service detailing the history of the applicant's convictions in the United Kingdom. The report reflects that on June 14, 1995, the applicant was convicted of two counts of robbery, and sentenced to three years imprisonment for each count. On April 18, 1994, the applicant was convicted of five counts of burglary and theft of a dwelling and one count of theft, and sentenced to 12 months imprisonment for the first count and six months imprisonment for each subsequent count. On March 20, 1992, the applicant was convicted of three counts of theft, and sentenced to 50 hours of community service for each count. On January 7, 1987, the applicant was convicted of three counts of burglary and theft of a non-dwelling, and sentenced to six months imprisonment for each count. On October 16, 1985, the applicant was convicted of shoplifting, and sentenced to two years probation, and ordered to pay \$24.00 in costs.

An individual is guilty of robbery under Theft Act 1968 § 8 "if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force." A conviction for robbery contains a maximum punishment of "imprisonment for life." Theft Act 1968 § 8(2).

Robbery has long been found to be a categorical crime involving moral turpitude. In *Matter of Martin*, the Board noted that "It is clear . . . that robbery is universally recognized as a crime involving moral turpitude." 18 I&N Dec. 226, 227 (BIA 1982) citing (*U.S. ex rel. Cerami v. Uhl*, 78 F.2d 698 (2d Cir.1935); *Matter of G--R--*, 2 I & N. Dec. 733 (BIA 1946; A.G.1947); *Matter of Kim*, 17 I & N. Dec. 144 (BIA 1979); *Matter of Rodriguez-Palma*, 17 I & N. Dec. 465 (BIA 1980). Therefore, robbery under Theft Act 1968 is a crime involving moral turpitude, and the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.¹ The applicant does not contest this determination of inadmissibility on appeal.

Beyond the decision of the director, the AAO notes that the applicant is also inadmissible under section 212(a)(2)(B) of the Act for having committed multiple criminal convictions for which the aggregate sentences to confinement were 5 years or more.

The criminal history report from the National Identification Service further reflects that on September 20, 1989, the applicant was convicted of possessing a controlled drug. The applicant was ordered to pay \$30.00 in fines and \$15.00 in costs.

Section 5 of the Misuse of Drugs Act 1971 provides, in pertinent parts:

¹ The AAO notes that because the applicant's conviction for robbery has been found to be a crime involving moral turpitude, we need not determine whether his other convictions are also crimes involving moral turpitude.

Restriction of possession of controlled drugs.

(1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.

(2) Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1) above.

(3) Subject to section 28 of this Act, it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 4(1) of this Act.

Based on the criminal history report from the National Identification Service, the AAO concludes that the applicant is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act for a violation of a law related to a controlled substance. The only waiver available for a controlled substance offense is under section 212(h) of the Act for simple possession of 30 grams or less of marijuana. The BIA stated that in determining whether an offense relates to a simple possession of 30 grams or less of marijuana, a categorically inquiry of the offense would obviously be insufficient. *Matter of Espinoza*, 25 I&N Dec. 118, 124-25 (BIA 2009) (“[W]e conclude that Congress envisioned something broader, specifically, a factual inquiry into whether an alien's criminal conduct bore such a close relationship to the simple possession of a minimal quantity of marijuana.”).

Counsel submitted a motion to reopen and request to submit additional evidence stating that the applicant “was cited in England for possession of less than 30 grams of marijuana for personal use only, and would request at least 90 days to obtain the pertinent police records.” *Motion to Reopen*, dated April 22, 2005. The applicant also stated that “the amount of marijuana involved in the arrest in England was substantially less than 30 grams” and indicated that he “will provide further evidence as soon as possible.” *Applicant's Declaration*, dated April 22, 2005. However, as of the date of this decision the applicant has not submitted the court disposition, arrest narrative, laboratory report, or any other records related to this conviction.

Therefore, the applicant has failed to establish that his drug possession offense was for simple possession of 30 grams or less of marijuana. Thus, he is ineligible for a 212(h) waiver of inadmissibility arising under section 212(a)(2)(A)(i)(II) of the Act. There is no other waiver available to an alien inadmissible under section 212(a)(2)(A)(i)(II).

The AAO notes that the applicant is eligible to be considered for a section 212(h) waiver of inadmissibility arising under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(B) of the Act.² However, even should we find that the applicant meets the requirements for a section 212(h) waiver, including a favorable exercise of discretion, he would nevertheless be inadmissible under section 212(a)(2)(A)(i)(II) of the Act, for which he does not appear to qualify for a waiver. No purpose is

² The AAO notes that the applicant was convicted of a violent crime, robbery under Theft Act 1968 § 8, which includes the use or threatened use of force. Therefore, he is subject to the heightened discretionary standard of 8 C.F.R. § 212.7(d).

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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.