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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

H2

Date: OCT 28 2011

Office: BALTIMORE

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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States pursuant to 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. The applicant has also been found inadmissible under 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.¹ He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and children.

The district director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated April 25, 2008.

On appeal, the applicant asserts that he has shown that his wife and children will suffer extreme hardship should the present waiver application be denied. *Statement from Prior Counsel with Form I-290B*, dated May 28, 2008.

The record contains, but is not limited to: a brief from the applicant's prior counsel; statements from the applicant, as well as the applicant's wife, friends, and coworkers; tax and financial records for the applicant and his wife; documentation relating to the applicant's and his wife's employment; medical documentation for the applicant's wife and older daughter; reports regarding the applicant's older daughter's learning disability; a report on conditions in El Salvador; and documentation relating to the applicant's criminal convictions. On July 8, 2011, the AAO requested that the applicant provide additional evidence relating to his criminal history and hardship to his family members, but the applicant failed to respond within the permitted 12-week period. The entire record was reviewed and considered in rendering this decision.

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

Criminal and related grounds. —

(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

¹ The district director did not address the applicant's inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, and instead focused on the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. However, the applicant's inadmissibility under section 212(a)(2)(A)(i)(II) of the Act has been raised in prior proceedings. Inadmissibility under either section requires a waiver under section 212(h) of the Act, if a waiver is available.

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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

- (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
- (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present.

However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

Section 212(h) of the Act provides, in pertinent part, that:

The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or 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 applicant has been convicted of numerous offenses in Maryland, including: Possession of Paraphernalia under Maryland Code § 5-619 on or about July 8, 2000; Unlawful Use of a Livestock Motor Vehicle under Maryland Code § 7-203 on or about October 17, 1995; Theft over \$300 under Maryland Code § 27-342 on or about January 2, 1997; and Malicious Destruction of Property under Maryland Code § 27-11 on or about January 2, 1997.

As noted above, the district director did not address the applicant's conviction for possession of paraphernalia, yet this conviction was raised in a prior proceeding before U.S. Citizenship and Immigration Services as a basis of inadmissibility. *Decision of the Interim District Director for Services, Baltimore*, dated November 17, 2008.

The Board of Immigration Appeals (BIA) has determined that a conviction for possession of drug paraphernalia renders an applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a crime involving a controlled substance. *Matter of Martinez-Espinoza*, 25 I&N Dec. 118, 122 (BIA 2009). An applicant who is inadmissible under section 212(a)(2)(A)(i)(II) of the Act based on a drug paraphernalia offense may qualify for a waiver of inadmissibility under section 212(h) of the Act if that offense "relates to a single offense of simple possession of 30 grams or less of marijuana." *Id.* at 123-6.

In the present matter, the record shows that the applicant pled guilty to possession of paraphernalia as part of a plea agreement after being charged with a single offense of Possession of Marijuana under Maryland Code § 27-287. Thus, the applicant's conviction for possession of paraphernalia was related to a single offense of possession of marijuana. At the time of the applicant's conviction, Maryland Code § 27-287 stated, in pertinent part:

Except as authorized by this subheading, it is unlawful for any person:

- (a) To possess or administer to another any controlled dangerous substance, unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice.

...

- (e) Any person who violates this section shall, upon conviction, be deemed guilty of a misdemeanor and be sentenced to a term of imprisonment for not more than four (4) years, a fine of not more than twenty-five thousand dollars (\$25,000), or both; provided, however, that any such person convicted of a violation of this section involving the use or possession of marihuana shall be punished by a period of imprisonment not to exceed one (1) year or by a fine not to exceed \$1,000.00, or both.

While Maryland Code § 27-287 criminalizes unlawful possession of marijuana, it does address the amount of marijuana that an individual must possess to violate the section of law. The applicant has not submitted any documentation relating to his arrest or conviction that indicates the amount of marijuana in his possession for which he was charged under Maryland Code § 27-287.

If the applicant was in possession of over 30 grams of marijuana, his conviction under Maryland Code § 5-619 did not relate to a single offense of simple possession of 30 grams or less of marijuana, and he is statutorily ineligible for a waiver. See section 212(h) of the Act; *Matter of Martinez-Espinoza*, 25 I&N Dec. at 123-6.

As noted above, on July 8, 2011 the AAO requested that the applicant provide all available documentation relating to his arrest, guilty plea, and conviction for possession of paraphernalia under Maryland Code § 5-619. The AAO specifically requested documentation to reflect the amount of marijuana the applicant possessed that led to the charge of possession of marijuana under Maryland Code § 27-287. However, the applicant failed to respond to the request within the permitted 12-week period, and he has not shown the amount of marijuana for which he was charged. Accordingly, the applicant has not shown that his conviction for possession of paraphernalia “relates to a single offense of simple possession of 30 grams or less of marijuana.” Section 212(h) of the Act. Based on the foregoing, the applicant has not shown that he is statutorily eligible for a waiver under section 212(h) of the Act, and for this reason the appeal must be dismissed.

As the applicant has not shown that he is eligible for a waiver of his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a crime involving a controlled substance, no purpose would be served in assessing whether he is eligible for a waiver of his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval 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.