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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

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DATE: APR 25 2012 OFFICE: ROME, ITALY FILE: [redacted]

IN RE: [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,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Morocco 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 committed a crime involving moral turpitude and section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), for having been a trafficker in a controlled substance. The applicant is the spouse of a U.S. citizen, and the father and stepfather of U.S. citizens. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The District Director found the applicant to be inadmissible to the United States under section 212(a)(2)(C) of the Act for which no waiver was available. He also indicated that the applicant had failed to establish that the bar to his admission would result in extreme hardship for a qualifying relative, as required for a waiver of an inadmissibility pursuant to section 212(a)(2)(A)(i) of the Act. The District Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *District Director's Decision*, dated June 17, 2008.

On appeal, the applicant states that United States Citizenship and Immigration Services (USCIS) did not consider all the relevant factors in his case. *Form I-290B, Notice of Appeal or Motion,* dated July 16, 2008.

In support of the application, the record contains, but is not limited to, statements from the applicant, his spouse and stepchildren; an employment letter for the applicant's spouse; tax returns for the applicant and his spouse; W-2 Wage and Tax Statements for the applicant and his spouse; school records and reports for the applicant's children; financial documentation, including evidence of the applicant's spouse's educational loans and the foreclosure on the applicant's and his spouse's home; medical records for the applicant's spouse's father and grandmother; country conditions materials for Morocco; documentation relating to the nonpayment of child support by the applicant's spouse's former husband; and court records relating to the applicant's criminal history. The entire record was reviewed and all relevant information considered in arriving at a decision on the appeal.

In that inadmissibility under section 212(a)(2)(C) of the Act may not be waived, the AAO will first consider whether the record establishes that the applicant has been a trafficker in any controlled substance.

Section 212(a)(2)(C) states in pertinent part:

> Any alien who the consular officer or the Attorney General [now Secretary of Homeland Security] knows or has reason to believe –
>
> > **(i)** is or has been an illicit trafficker in any controlled substance or in any listed chemical . . ., or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listing substance or chemical, or endeavored to do so . . . .

The record reflects that the applicant was arrested on October 23, 2004 and charged with Trafficking in Controlled Substance under Nevada Revised Statutes (NRS) § 453.3395, which states:

> Except as otherwise provided . . . a person who knowingly or intentionally sells, manufactures, delivers or brings into this state or who is knowingly or intentionally in actual or constructive possession of any controlled substance which is listed in schedule II or any mixture which contains any such controlled substance shall be punished, unless a greater penalty is provided pursuant to NRS 453.322, if the quantity involved:
>
> 1. Is 28 grams or more, but less than 200 grams, for a category C felony as provided in NRS 293.130 and by a fine of not more than $50,000.
>
> 2. Is 200 grams or more, but less than 400 grams, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years and by a fine of not more than $100,000.
>
> 3. Is 400 grams or more, for a category A felony by imprisonment in the state prison:
>
> (a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served; or
>
> (b) For a definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been served,
>
> and by a fine of not more than $250,000.

Although the applicant was ultimately not convicted of trafficking but of Preventing or Dissuading A Witness from Testifying under NRS § 199.305, the District Director found that his 2004 arrest for trafficking and the applicant's possession of cocaine at the time of two prior arrests provided sufficient reason to believe that he was an illicit trafficker in a controlled substance and thus inadmissible under section 212(a)(2)(C) of the Act. In support of this finding, the District Director referenced a July 27, 2006 decision of the Board of Immigration Appeals (BIA), which dismissed the applicant's appeal of the BIA's denial of his 2006 motion to reopen his removal proceedings. The District Director noted that the BIA had concluded in its decision that the 2004 trafficking charge brought against the applicant had been amended specifically to allow him to avoid the immigration consequences of this offense.

The record contains a copy of the BIA decision relied upon by the District Director, which indicates that the BIA reviewed all of the affidavits relating to the applicant's criminal charges and found his 2004 trafficking charge to have been amended specifically for the purpose of allowing him to avoid its immigration consequences. Citing *Rojas-Garcia v. Ashcroft*, 339 F.3d 814 (9th Cir. 2003), the BIA concluded there was reason to believe that the applicant was a trafficker in a controlled substance and, therefore, inadmissible pursuant to section 212(a)(2)(C) of the Act.

Pursuant to section 103(a)(1) of the Act, 8 U.S.C. § 1103(a)(1):

> (1) The Secretary of Homeland Security shall be charged with the administration and enforcement of this Act and all other laws relating to the immigration and naturalization of aliens, except insofar as this Act or such laws relate to the power, functions, and duties conferred upon the President,

> Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers; *Provided, however,* that determination and ruling by the Attorney General with respect to all questions of law shall be controlling.

The BIA has reviewed the applicant's case and found him to be subject to section 212(a)(2)(C) of the Act, a ground of inadmissibility for which there is no waiver. As the Attorney General's authority is controlling in this matter, the AAO will not further review the applicant's inadmissibility under section 212(a)(2)(C) of the Act. Moreover, in light of the applicant's 212(a)(2)(C) inadmissibility, for which there is no waiver, we conclude that no purpose would be served by considering whether the applicant's spouse or child would suffer extreme hardship as a result of this inadmissibility.

In proceedings for an application for a 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.