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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: **FEB 21 2012** Office: RALEIGH-DURHAM 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,

f Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Raleigh-Durham, North Carolina, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Cuba 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 having been convicted of crimes relating to a controlled substance. The applicant seeks a waiver of inadmissibility. The field office director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), stating that a waiver is not available for inadmissibility under section 212(a)(2)(C) of the Act.

On appeal, counsel states that on December 31, 1982, the applicant was convicted of possession of a drug, possession of drug paraphernalia, and theft. Citing section 237(a)(2)(A)(ii) of the Act, counsel asserts that the applicant's offenses are from a single scheme of criminal misconduct, and are therefore not regarded as two separate controlled substance violations, so the applicant qualifies for the section 212(h) waiver.

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 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.

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)(II) . . . insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if — . . . in the case of an immigrant who is spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme

hardship to the United States citizen or lawfully permanent resident spouse, parent, son, or daughter of such alien.

The record of conviction shows that the applicant was convicted of possession of a controlled drug in violation of N.H. Rev. Stat. Ann. § 318-B:2, and possession of drug paraphernalia in violation of N.H. Rev. Stat. Ann. § 318-B:2. At the time of the offense, N.H. Rev. Stat. Ann. § 318-B:2 stated:

It shall be unlawful for any person to manufacture, possess, have under his control, sell, purchase, prescribe, administer, or transport or possess with intent to sell, dispense, or compound any controlled drug, or controlled drug analog, or any preparation containing a controlled drug, except as authorized in this chapter.

. . .

N.H. Rev. Stat. Ann. § 318-B:1, VI defined “controlled drug” as a drug or chemical containing:

any quantity of a substance which has been designated as subject to the [Federal] Comprehensive Drug Abuse Prevention and Control Act of 1970, or which has been designated as a depressant or stimulant drug pursuant to federal food and drug laws, or which has been by regulation, after investigation and hearing, designated by the division of public health services as having a stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and as having a potential for abuse or physiological and psychological dependence, or both.

In regard to drug paraphernalia, N.H. Rev. Stat. Ann. § 318-B:2 stated that:

It shall be unlawful for any person to deliver, possess with intent to deliver or manufacture with intent to deliver, drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

The record of conviction conveys that the applicant was indicted for and pled guilty to having purposely possessed or having under his control the narcotic drug demerol. Demerol is a “controlled substance” that relates to section 102 of the Controlled Substances Act (21 U.S.C. § 802) and is a schedule II controlled substance under 21 U.S.C.A. § 812. *See Matter of McClendon*, 12 I &N Dec. 233, 235 (BIA 1967) (“Demerol, which is actually demerol hydrochloride, and is a form of meperidine hydrochloride or isonipecaine hydrochloride.” Demerol is a “salt derivative or preparation of *** isonipecaine or any addiction-forming opiate.”)

This conviction renders the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The waiver under section 212(h) of the Act relates to a single offense of simple possession of 30 grams or less of marijuana. The applicant’s controlled substance offenses do not qualify for the limited waiver provided in section 212(h) of the Act. Accordingly, the applicant is statutorily ineligible for consideration for a waiver of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act.

And finally, we reject counsel's contention that the applicant's controlled substance violations should be treated as a single controlled substance offense. Section 237(a)(2)(A) of the Act relates to deportability and is not relevant to inadmissibility under section 212(a) of the Act. Regardless, whether or not we treated the applicant's violations as a single offense, they do not relate to marijuana.

In proceedings regarding a waiver of grounds of inadmissibility under sections 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.