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

[REDACTED]

H2

Date:

Office: SANTA DOMINGO

[REDACTED]

JUL 10 2012

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:

[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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Santo Domingo, Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Trinidad who was found to be inadmissible under 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 a crime involving a controlled substance. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), finding that the applicant had failed to establish that the applicant had a qualifying relative as required by section 212(h) of the Act, and that the director's denial of admission to the applicant to the United States would constitute extreme hardship to a qualifying relative.

On appeal, counsel argued that the applicant is eligible for a waiver under section 212(h) of the Act and that the applicant's qualifying relatives in the United States are his sister and uncle. Counsel contends that the applicant's sister requires help with daily activities due to vision problems, and that the applicant would provide this much needed help.

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 submitted documents comprising the record of conviction stated that the applicant was convicted in Trinidad for possession of cannabis sativa (marijuana) on April 6, 1993. The criminal information stated that the applicant had in his trouser pocket “one hand rolled cigarette resembling that of marijuana.” The applicant was sentenced to 12 months hard labor.

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 has not established that his controlled substance offense qualifies for the limited waiver provided in section 212(h) of the Act as he has not demonstrated that his cigarette was 30 grams or less of marijuana. Accordingly, the applicant is statutorily ineligible for consideration for a waiver of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act.

Furthermore, even if we had determined that the applicant’s controlled substance offense qualifies for consideration of the section 212(h) waiver, the applicant has not provided any evidence of having the requisite qualifying relative. Section 212(h) of the Act states that the alien must establish that his “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.” In the instant case, the applicant stated that his only relatives in the United States are his sister and uncle, who are not the requisite qualifying relatives under section 212(h) of the Act. Consequently, the applicant is statutorily ineligible for consideration for a waiver of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

ORDER: The appeal is dismissed.