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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**



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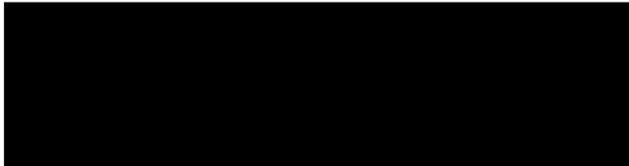
Date: **MAY 18 2012** Office: TAMPA

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 District Director, Tampa, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Columbia who was found to be inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), (a)(2)(A)(i)(II), for having been convicted of a crime involving moral turpitude and crimes relating to a controlled substance. He seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident mother.

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 November 13, 2009.

On appeal, counsel for the applicant asserts that the applicant's mother will suffer extreme hardship should the present waiver application be denied. *Brief from Counsel*, dated January 11, 2010.

The record contains, but is not limited to: a brief from counsel; documentation regarding the applicant's mother's mental and physical health; documentation regarding the applicant's financial status; and evidence relating to the applicant's criminal convictions. 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 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.)

The record shows that the applicant committed multiple criminal offenses in Florida, for which he received the equivalent of convictions for immigration purposes. He committed the offense of petit theft under Florida Statutes § 812.014 for his conduct on or about December 4, 2002, for which he pled guilty and received six months of probation. He committed the offenses of possession of marijuana under Florida Statutes § 893.13 and possession of drug paraphernalia under Florida Statutes § 893.147

for his conduct on January 21, 2004. He pled nolo contendere to both charges, adjudication of guilt was withheld and the applicant was placed on probation for one year for each offense, to be served concurrently. The AAO need not reach an analysis of whether the applicant's conviction for a theft offense renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude, as his offenses relating to a controlled substance clearly render him inadmissible under section 212(a)(2)(A)(i)(II) of the Act, and he is not eligible for a waiver.

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's offenses of possession of marijuana and possession of drug paraphernalia constitute two separate convictions relating to a controlled substance, rendering him inadmissible under section 212(a)(2)(A)(i)(II) of the Act. *See Matter of Espinoza*, 25 I&N Dec. 118 (BIA 2009). There is no provision under the Act that allows for a waiver of inadmissibility when an applicant has been convicted of more than one crime relating to a controlled substance. For this reason, the appeal must be dismissed.

The district director did not indicate that the applicant is statutorily ineligible for a waiver under section 212(h) of the Act. However, an application that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office does not identify all of the grounds for denial in the initial decision. *See 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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he has established extreme hardship to his lawful permanent resident mother, or whether he merits a waiver as a matter of discretion.

In proceedings for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.