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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 **SEP 10 2012**

Office: NORFOLK, VA

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 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 with the field office or service center that originally decided your case by filing a 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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Grenada 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. § (a)(2)(A)(i)(II), for having been convicted of crimes relating to a controlled substance. He seeks a waiver of inadmissibility in order to reside with his family in the United States.

The field office director denied the Form I-601 application for a waiver, finding that no waiver is available for the applicant's inadmissibility.¹ *Decision of the Field Office Director*, dated October 18, 2010.

On appeal, counsel for the applicant asserts that the applicant's convictions were prior to "AEDPA"², possession is not an aggravated felony under section 212(a)(2)(A)(i)(II) of the Act, and the convictions occurred more than 15 years ago. *Form I-290B*, received November 12, 2010.

The record contains, but is not limited to: a statement from counsel on Form I-290B and documentation regarding 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 —

...

(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.

¹ The field office director erroneously indicated that the applicant is inadmissible under section 101(a)(43)(E)(ii) of the Act, which is not a ground of inadmissibility. However, the field office director correctly determined that the applicant is inadmissible due to his convictions relating to a controlled substance, and that no waiver is available.

² Counsel does not specify to what "AEDPA" refers, and he has not articulated an assertion in this regard that can be properly evaluated by the AAO.

802)), is inadmissible.

The record reflects that on April 21, 1993 the applicant was convicted in the Commonwealth of Virginia of possession of cocaine and possession of a firearm while unlawfully in possession of cocaine.

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 cocaine and possession of a firearm while unlawfully in possession of cocaine constitute two separate convictions relating to a controlled substance, rendering him inadmissible under section 212(a)(2)(A)(i)(II) of the Act. Further, each conviction is for an offense that does not relate to possession of 30 grams or less of marijuana. 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.

It is noted that counsel's contentions regarding the date of the convictions and whether possession is an aggravated felony are not relevant to whether the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act or eligible for a waiver. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he has established extreme hardship to a qualifying relative, 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.