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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



U.S. Citizenship  
and Immigration  
Services

DATE:

Office: SEATTLE, WA

FILE:

IN RE:

APR 05

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 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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native of Vietnam and a citizen of Canada 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 a controlled substance violation; and section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), for being an illicit trafficker in a controlled substance. The applicant is the spouse and mother of U.S. citizens. She 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 Field Office Director found that the applicant had failed to establish that her inadmissibility under section 212(a)(2)(A)(i)(II) of the Act would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated July 13, 2011. In her denial of the applicant's Form I-485 Application to Register Permanent Residence or Adjust Status, the Field Office Director indicated that the applicant was also inadmissible pursuant to section 212(a)(2)(C) of the Act and that no waiver was available. *Decision of the Field Office Director*, dated July 13, 2011.

On appeal, the applicant asserts that the record does not establish a basis for finding her inadmissible under section 212(a)(2)(C) of the Act. She also states that the record establishes that her spouse would suffer extreme hardship if she and their children leave the United States.<sup>1</sup> *Form I-290B, Notice of Appeal or Motion*, dated August 9, 2011; *Brief submitted in Support of Appeal*, dated September 12, 2011.

The evidence of record includes, but is not limited to supporting briefs; a statement from the applicant; medical documentation relating to the applicant's spouse and older daughter; earnings statements for the applicant and her spouse; tax documents; an employment letter for the applicant's spouse; a letter of support; and court records relating to the applicant's conviction. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

....

- (II) A violation (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled

<sup>1</sup> The record contains a Form EOIR-28 signed by an individual who indicates that he is representing the applicant and is an accredited representative of [REDACTED]. A review of the accreditation roster maintained by the Executive Office for Immigration Review does not find this individual to be listed and the AAO will, therefore, consider the applicant to be self-represented. We also note that the Form EOIR-28 is used to indicate representation before the immigration court and that it is the Form G-28, Notice of Entry of Appearance as Attorney or Representative, that is filed with the AAO.

substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(a)(2)(C) of the Act states:

Any alien who the consular officer or the Attorney General knows or has reason to believe –

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 802 of title 21), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

In the present case, the record reflects that on November 4, 2010, the applicant pled guilty to Solicitation to Possess Marijuana Less than 40 Grams, [REDACTED]

[REDACTED] She was sentenced to three months in jail, which was suspended, and ordered to pay a \$250 victim assessment fee and to obtain a substance abuse evaluation within 30 days of her November 22, 2010 sentencing hearing.

Prior to reviewing the conviction that bars the applicant's admission to the United States under section 212(a)(2)(A)(i)(II) of the Act, the AAO will consider whether she is subject to section 212(a)(2)(C) of the Act for which no waiver is available.

The record indicates that the applicant, along with her U.S. citizen spouse, was the subject of a drug trafficking investigation conducted by the Drug Enforcement Administration (DEA) during 2007 and 2008. Although the applicant was ultimately convicted of Solicitation to Possess Marijuana Less than 40 Grams, she was initially charged with the manufacturing of marijuana under [REDACTED] [REDACTED] as was her spouse, who was convicted on this charge. In bringing the drug manufacturing charge against the applicant, the prosecuting attorney for [REDACTED] relied on a December 3, 2009 Certification for Determination of Probable Cause prepared by a [REDACTED] Police Department detective who had been assigned to the DEA taskforce.

This investigative report reflects that on September 15, 2008, the applicant was observed entering two addresses later found to be "marijuana grow" sites. On November 18, 2008, she was observed driving into the garage at a third address, also subsequently identified as a marijuana grow site. The report further indicates that an unnamed informant identified the applicant from a photograph as being involved in the cultivation of marijuana. It also states that the motor vehicle routinely used by the applicant, which was registered to her spouse, was observed on September 16, October 19 and 21, and November 28, 2008 at residential grow sites, one of which was owned by her spouse. The

report further reflects that at the time of the applicant's and her spouse's arrests on December 11, 2008, law enforcement officers found \$27,640 in cash in their home, with \$13,000 and \$10,000 found in two areas of a bathroom cabinet. Additional cash, in the amounts of \$3,160, \$980 and \$500, was also located by investigators at the applicant's home.

Based on this information and that provided by the lead investigator for the taskforce, the Field Office Director concluded that there was reason to believe that the applicant had been involved in the manufacturing and trafficking of marijuana, and that she had knowingly aided, assisted, or conspired with her spouse in these activities. Accordingly, the Field Office Director found the applicant inadmissible under section 212(a)(2)(C) of the Act.

For an applicant to be inadmissible under section 212(a)(2)(C) of the Act, an immigration officer must know or have reason to believe that the applicant is or has been an illicit trafficker in a controlled substance, is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking or endeavored to do so, or is the immediate relative of an illicit trafficker who has benefited from the illicit activity and knew or should have known that the benefit was the product of that activity. In *Alarcon-Serrano v. INS*, 220 F.3d 1116, 1119 (9<sup>th</sup> Cir. 2000), the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit), the jurisdiction within which this case arises, held that there must be "reasonable, substantial, and probative evidence" before immigration officers may conclude they know or have reason to believe that an individual is an illicit trafficker in controlled substances. *Id.* (citing *Hamid v. INS*, 538 F.2d 1389, 1390-91 (9<sup>th</sup> Cir. 1976)).

In the present case, the applicant's spouse has pled guilty to the manufacture of marijuana and the previously noted investigative report indicates that law enforcement officers observed the applicant visiting several marijuana grow sites, which were later found to house approximately 1,000 marijuana plants. We also note that this same report reflects that more than \$27,000 was found at the applicant's home, \$23,000 of which was the applicant's bathroom cabinet. Given the extent of the marijuana cultivation, we do not find error in the field officer director's decision that there is a reason to believe that the applicant was involved in the manufacture or distribution of marijuana or actively aided or abetted such activities. Even if such a finding were not warranted, we find that the evidence provides reason to believe that the applicant's spouse benefited financially from her husband's trafficking activities within five years of seeking admission to the United States and knew or reasonably should have known that this income came from his manufacture of marijuana. Accordingly, we concur that the applicant's admission to the United States is barred pursuant to section 212(a)(2)(C)(ii) of the Act and that no waiver is available.

Having found the applicant to be statutorily ineligible for relief, the AAO finds no purpose would be served in considering inadmissibility under section 212(a)(2)(A)(i)(II) of the Act in relating to her convictions for Solicitation to Possess Marijuana Less than 40 Grams, [REDACTED] and Possession of Marijuana, [REDACTED]

In proceedings for an application for a waiver of grounds of inadmissibility, 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 and the appeal will be dismissed.

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**ORDER:** The appeal is dismissed.