

(b)(6)



**U.S. Citizenship
and Immigration
Services**

DATE: **APR 05 2013**

Office: HONOLULU

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and (i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and (i)

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

The applicant is a native and citizen of Western Samoa 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 committed a controlled substance violation and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought a benefit under the Act through fraud or the willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen. He seeks waivers of inadmissibility pursuant to sections 212(h) and (i) of the Act, 8 U.S.C. §§ 1182(h) and (i), in order to reside in the United States.

The Field Office Director found that the applicant had not demonstrated that a qualifying relative would experience extreme hardship as a result of his inadmissibility and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's decision*, dated September 29, 2011.

On appeal, the applicant's spouse states that she and her children will experience hardship without the applicant. *Form I-290B, Notice of Appeal or Motion*, received October 27, 2011; *Statement of the Applicant's Spouse on 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 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:

(h) The Attorney General [now Secretary of Homeland Security] may, in his [now her] discretion, waive the application of . . . 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 record reflects that the applicant was convicted by the High Court of American Samoa on [redacted] for Possession of a Controlled Substance, American Samoa Code Annotated (ASCA) 13.1022, a Class D felony. On September 26, 1996, the Court sentenced the applicant to three years in prison.

At the time of the applicant's conviction, ASCA 13.1022 stated in pertinent part:

(a) Except as authorized by the director, it is unlawful for a person to possess a controlled substance.¹

We note that in 1996, American Samoan law, ASCA 13.1001, defined a controlled substance “as a drug, substance, or immediate precursor listed in [ASCA] 13.1004 through [ASCA] 13.1014”² and that the drugs and substances so listed were also identified as controlled substances pursuant to 21 U.S.C. § 802, i.e., listed in Schedules I, II, III, IV or V of 21 U.S.C. § 812. Therefore, the applicant’s violation of ASCA 13.1022 is a controlled substance violation for immigration purposes and bars his admission to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act.

Section 212(h) of the Act provides a waiver for a 212(a)(2)(A)(i)(II) inadmissibility only where an applicant has been convicted of a single offense relating to simple possession of 30 grams or less of marijuana. In the present case, the record does not identify the controlled substance that the applicant was convicted of possessing or the amount of that substance and, therefore, does not establish that his conviction was related solely to the possession of 30 grams or less of marijuana. Accordingly, he has not established that he is eligible for waiver consideration under section 212(h) of the Act.

As the record does not establish that the applicant is eligible to apply for a section 212(h) waiver, the AAO finds no purpose would be served in addressing his section 212(a)(6)(C)(i) inadmissibility or in determining whether the record demonstrates that his inadmissibility under the Act would result in extreme hardship for his spouse.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(h) of the Act, 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.

ORDER: The appeal is dismissed.

¹ Established by PL 13-56 § 3, 1974; amended by PL 18-40 § 1, 1984.

² List of controlled substances established by PL 13-56 § 3, 1974.