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U.S. Citizenship
and Immigration
Services

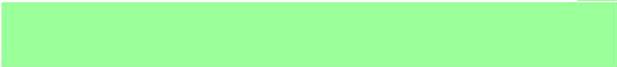


Date: **FEB 27 2013**

Office: DETROIT, MICHIGAN

FILE: 

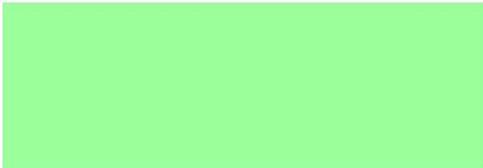
IN RE:

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 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 Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. An appeal of the denial was treated as a motion and dismissed by the field office director. The field office director's denial of the appeal will be withdrawn, for consideration of the appeal by the AAO. The appeal will be dismissed and the waiver application will be denied.

The applicant is a native and citizen of Cuba who was found to be inadmissible to the United States pursuant to section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(C), for being a controlled substance trafficker; and section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), for having been convicted of multiple crimes. The applicant sought a waiver of inadmissibility. On August 17, 2012, the director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that the applicant was statutorily ineligible for a waiver. The applicant filed a timely appeal.

On December 5, 2012, the director issued a decision stating that the appeal was submitted as a motion to reopen and reconsider, and was again denied. Pursuant to 8 C.F.R. § 103.3(a)(2)(ii) and (iii) when a timely appeal is received by a field office, that office should review the appeal, and if favorable action is not warranted, the record should be forwarded to the AAO for review. As there was no authority in the regulations for the field office to treat the applicant's appeal as a motion, the AAO will withdraw the denial and issue a new decision on the appeal.

On appeal, counsel contends that the applicant has two convictions that are over 25 years old. Counsel states that on July 15, 1981, the applicant was convicted in Florida for possession with intent to distribute a scheduled I controlled substance, and was convicted in Florida for conspiracy to distribute marijuana on January 13, 1986. Counsel argues that the 1981 conviction does not state the amount of the marijuana the applicant had on the vessel, and even though the indictment indicates a certain amount of marijuana, the indictment is not proof of the actual amount of marijuana in the vessel or the amount of marijuana to which the applicant pleaded guilty. Counsel asserts that with the 1986 conviction there is no indication of the amount of marijuana the applicant was alleged to have possessed. Counsel states that the applicant would have explained the amount of marijuana had he been asked by the field office. Counsel contends that the applicant was never arrested, charged or convicted of unauthorized transfer of food stamps. Counsel asserts that the applicant is married to a U.S. citizen, and they have a special needs child who is a lawful permanent resident.

We will first address the finding of inadmissibility.

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

- (2) Criminal and related grounds
 - (A) Conviction of certain crimes
 - (i) In general

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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 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 802 of Title 21), is inadmissible.

...

(C) Controlled substance traffickers

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 . . . 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 applicant's rap sheet reflects that on August 6, 1981 the applicant was convicted in Florida of possession with intent to distribute a schedule I non-narcotic and was sentenced to 30 months confinement. It shows that on February 15, 1982, the applicant was convicted in Florida of possession with intent to distribute a scheduled I non-narcotic and sentenced to 30 months of confinement. On June 13, 1986, the applicant was convicted in Florida of possession of marijuana and sentenced to 60 months of confinement. Lastly, on April 14, 1986, the applicant was arrested in Florida for distribution of marijuana, and convicted of the charge and sentenced to imprisonment for five years.

Counsel states that the drug involved in the 1981 conviction for possession with intent to distribute a scheduled I controlled substance was for marijuana that the applicant had on a vessel, and that the applicant's conviction records do not indicate the amount of marijuana involved in that offense, and that the record of conviction for the January 13, 1986 conviction for conspiracy to distribute marijuana does not state the amount of marijuana.

The AAO was not provided with any of the records of conviction for the drug offenses. Nevertheless, the record supports that the applicant is inadmissible under section 212(a)(2)(C)(i) of the Act, as there is "reason to believe" that the applicant was an illicit trafficker in a controlled substance. In order for an applicant to be inadmissible under section 212(a)(2)(C) of the Act, the only requirement is that an immigration officer "knows or has reason to believe" that the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled, or endeavored to do so. *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9th Cir. 2000). In order for an immigration officer to have sufficient "reason to believe" that an applicant has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by "reasonable, substantial, and probative evidence." *Garces v. U.S. Atty. Gen.*, 611 F.3d 1337, 1346-1347 (11th Cir. 2010) (citing *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9th Cir. 2000)).

In view of the aforementioned arrest on April 14, 1986, and subsequent conviction for distribution of marijuana, and counsel's statement that the 1981 conviction for intent to distribute a scheduled I controlled substance involved marijuana on a vessel, there is reasonable, substantial, and probative evidence to support a "reason to believe" that the applicant has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) of the Act.

Counsel asserts that the amount of marijuana in the convictions is not disclosed in the applicant's records of conviction. The applicant was convicted of intent to distribute a scheduled I controlled substance (marijuana) and distribution of marijuana. Though possession of large quantities of a drug has been considered as evidence of trafficking, section 212(a)(2)(C)(i) of the Act has no de minimus exception where the record otherwise shows trafficking.

In sum, we find that there is sufficient reason to believe that the applicant has been an illicit trafficker in a controlled substance, and is inadmissible under section 212(a)(2)(C)(i) of the Act. There is no provision under the Act that allows for waiver of inadmissibility under section 212(a)(2)(C)(i) of the Act.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.