U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 23 2013 Office: NEBRASKA SERVICE CENTER FILE:

IN RE:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the Service Center Director, Lincoln, Nebraska and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who was found to be inadmissible under 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 violated a law relating to a controlled substance. The applicant was also found inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed a crime involving moral turpitude. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse. The applicant was ordered removed from the United States and is also inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). In regards to that ground of inadmissibility, the applicant has concurrently filed an Application for Permission to Reapply for Admission (From I-212), which is the subject of a separate appeal.

On October 15, 2012, the Service Center Director denied the Form I-601 application for a waiver, concluding that the applicant is statutorily ineligible for a waiver of inadmissibility as he is a former lawful permanent resident who has been convicted of an aggravated felony.

On appeal, the applicant states that he has not had any convictions since his removal and his U.S. citizen spouse will suffer extreme hardship as a result of his inadmissibility.

In support of the waiver application, the record includes, but is not limited to: statements from the applicant; medical records for the applicant's spouse; biographical information for the applicant and his spouse; and documentation of the applicant's criminal and immigration history.

We will first address the applicant's admissibility and eligibility for a waiver. The applicant was found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a crime involving a controlled substance.

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

> (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. 802)), is inadmissible.

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The applicant's criminal record from the United States indicates that he was convicted of eight offenses, two of which involved the possession of cocaine. On August 8, 1997, before the

Florida, the applicant was found guilty of Possession of Cocaine, in violation of Florida Statute section 893.02(2)(A)(4). The applicant was sentenced to sixth months of confinement. On December 3, 1998, before the , Florida, the applicant was again found guilty of Possession of Cocaine, in violation of Florida Statute section 893.02(2)(A)(4). For this conviction, the applicant was sentenced to one year and one day of confinement in state prison. The applicant was placed into removal proceedings and ordered removed on May 7, 1999 under section 237(a)(2)(A)(iii) for having been convicted of an aggravated felony. The applicant's other convictions included, but are not limited to: Grand Theft in violation of Florida Statute section 812.014; Burglary in violation of Florida Statute 810.02; Possession of Burglary Tools in violation of Florida Statute section 810.06; and Petit Theft in violation of Florida Statute section 812.014.

As result of the applicant's convictions for Possession of Cocaine, he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of an offense involving possession of a controlled substance.

Section 212(h) of the Act provides, in pertinent parts:

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of 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 if -
> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --
> (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> (iii) the alien has been rehabilitated; or
> (B) in the case of an immigrant who is the 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 [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .; and
> (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In order to be eligible for consideration for a waiver under section 212(h) of the Act, the applicant must establish that his conviction relates to simple possession of 30 grams or less of marijuana. The applicant's convictions for possession of cocaine do not meet the requirement of being a single offense of simple possession of 30 grams or less of marijuana.

The burden of proof is upon the applicant to establish he is admissible to the United States in accordance with the requirements at 8 C.F.R. 103.2(b).

The Service Center Director also found that the applicant was ineligible for a waiver under section 212(h) as a former permanent resident of the United States who has been convicted of an aggravated felony. We do not need to make a determination on that ground of ineligibility at this time, as the applicant is not eligible for a waiver based on his convictions for two offenses involving the violation of a law or regulation of a State, the United States, or a foreign country relating to a controlled substance.

The AAO notes that the applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude; however, as the applicant is statutorily ineligible for a waiver of inadmissibility of section 212(a)(2)(A)(i)(II) of the Act, no purpose would be served in analyzing his inadmissibility or eligibility for a waiver in relation to section 212(a)(2)(A)(i)(I) of the Act.

The AAO acknowledges the documentation in the record regarding the hardship to the applicant's spouse as a result of his inadmissibility and the applicant's contentions that he has not been convicted of any offense since his removal from the United States; however, there is no discretionary basis to approve the applicant's Form I-601 application. The applicant is statutorily ineligible to apply for a waiver of section 212(a)(2)(A)(i)(II) of the Act. Thus, no purpose is served in adjudicating his waiver application. *Cf. Matter of J- F- D-*, 10 I&N Dec. 694 (Reg. Comm. 1963).

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.