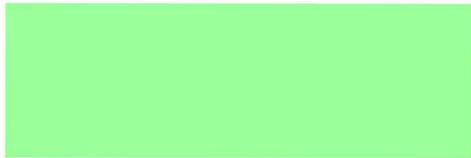


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U.S. Citizenship
and Immigration
Services

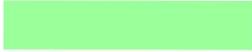


DATE: JUN 12 2013

Office: VIENNA, AUSTRIA

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to sections 212(a)(9)(B) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and 8 U.S.C. § 1182(h), respectively, and Application for Permission to Reapply for Admission into the United States After Deportation or Removal under section 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A)

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 request 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, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bulgaria who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within ten years of his last departure from the United States. The applicant's spouse, child, and parents are U.S. citizens. The applicant seeks a waiver in order to reside in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 22, 2011. The applicant filed a timely appeal alleging that his spouse would suffer extreme hardship if the waiver application were denied. In a Notice of Intent to Dismiss (NOID) dated April 5, 2013, the AAO found that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) because his convictions for petty theft in violation of Cal. Penal Code § 484(a) and forgery in violation of NRS § 205.090 qualify as crimes involving moral turpitude. We also found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act for accruing more than one year of unlawful presence in the United States between April 1, 1997 and his removal on February 6, 2008.

Additionally, we found that the applicant had been arrested on December 18, 1994 for possession of narcotics and that the applicant had not submitted the full record of conviction to demonstrate the type and amount of drug he possessed. We noted that according to the police report, the applicant had possessed marijuana and cocaine. We granted the applicant 30 days to respond to the NOID to demonstrate that he had not been convicted for possession of cocaine. *Id.* We indicated that if the applicant failed to respond, he would be found ineligible for a waiver and that his appeal would be dismissed. *Id.* The applicant did not respond to the NOID.

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 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 . . . is inadmissible.

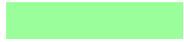
As we noted in our Notice of Intent to Deny, the record includes a Crime Report from the [REDACTED] Police department, dated December 18, 1994, which reflects that the applicant was arrested on that date for possession of narcotics. The police report indicates that the applicant had in his possession a cigarette with a dried leafy substance smelling of marijuana and a folded paper bundle containing approximately 0.2 grams of cocaine. The applicant was charged under former California Health and Safety Code Section 11350(a) and cocaine is listed as the “type of weapon, instrument or force” in box 46 of the report. The applicant states that he served ten days in jail for “possession of a controlled substance (small amount)” in 1994 in [REDACTED]. The applicant also indicates on his Form I-601 that he has been involved in a controlled substance violation involving a single offense of simple possession of 30 grams or less of marijuana. As such, the record indicates that the applicant has conceded that he was convicted of violating a law related to a controlled substance and he is therefore inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

We also indicated in our NOID that a conviction for possessing 30 grams or less of marijuana would allow for a waiver under section 212(h) of the Act. However, a conviction for possession of cocaine renders the applicant ineligible for a waiver. As the applicant has not submitted the full record of conviction to demonstrate the type and amount of drug he possessed, we look beyond the record of conviction. *See Matter of Grijalva*, 19 I&N Dec. 713, 718 (BIA 1988) (“[W]here the amount of marijuana that an alien has been convicted of possessing cannot be readily determined from the conviction record, the alien who seeks section 241(f)(2) relief must come forward with credible and convicting testimony, or other evidence independent of his conviction record, to meet his burden of showing that his conviction involved ‘30 grams or less of marihuana.’”); *see also Matter of Martinez-Espinoza*, 25 I&N Dec. 118, 124 (BIA 2009) (citing *Nijhawan v. Holder*, 129 S.Ct. 2294, 2298-99 (2009)). As mentioned, the record contains a police report which indicates that while the applicant did possess marijuana, he also possessed 0.2 grams of cocaine.

The applicant has not responded to the NOID and has not submitted the full record of conviction to show that he was not convicted of possessing cocaine. Therefore, he has failed to meet his burden of demonstrating eligibility for a waiver of inadmissibility under section 212(h) of the Act. *See* section 291 of the Act. Accordingly, no purpose would be served in addressing his eligibility for a waiver under section 212(a)(9)(B) of the Act and the appeal will be dismissed.

Additionally, the AAO notes that the field office director denied the applicant’s Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, in the same decision. An application for permission to reapply for admission is properly denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964). As the applicant remains inadmissible under section 212(a)(2)(A)(i)(II) of the Act, no purpose would be served in granting the applicant’s Form I-212.

(b)(6)



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ORDER: The appeal is dismissed.