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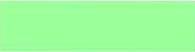
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
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Washington, DC 20529-2090

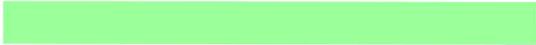


U.S. Citizenship  
and Immigration  
Services



DATE: **JUN 12 2013** Office: MANCHESTER

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:



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 cursive script that reads "Michael Shumway".

Ron Rosenberg,  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for waiver of inadmissibility was denied by the Field Office Director, Manchester, New Hampshire, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom 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.

On August 28, 2012, the Field Office Director denied the Form I-601 application for a waiver, concluding that the applicant is statutorily ineligible for a waiver of inadmissibility as a result of multiple controlled substance convictions.

On appeal, counsel for the applicant states that the applicant should not be inadmissible as a result of his convictions.

In support of the waiver application, the record includes, but is not limited to a brief by the applicant's counsel, counsel's analysis of the applicant's criminal convictions, biographical information for the applicant and his U.S. citizen spouse, a statement from the applicant, a statement from the applicant's spouse, medical and psychological records for the applicant's spouse, limited financial information for the applicant's spouse, documentation regarding the applicant's employment and unemployment, documentation regarding the spouse's mother, country conditions information for Ireland, 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.

The applicant's criminal record from the United Kingdom indicates that he has been arrested on nine occasions and has been convicted on six occasions, five of which involve the possession of a controlled substance in violation of the Misuse of Drugs Act of 1971. On April 11, 2002, the applicant was found guilty of Possessing a Controlled Drug, Class B Cannabis, by the [REDACTED] Magistrates Court. The applicant was fined ordered to pay court costs. On September 20, 2001, the applicant was found guilty of Possession of a Class B Drug, Cannabis Resin, by the [REDACTED] Magistrates Court. He was ordered to do 12 months of community rehabilitee and pay court costs. On January 5, 2000, the applicant was found guilty of Possession of a Class B Drug, Cannabis Resin, by the [REDACTED] Magistrates Court. He was ordered to complete 12 months of probation. On February 3, 1997, the applicant was found guilty of Possessing Controlled Drug by the [REDACTED] Magistrates. He was fined and ordered to pay court costs. On March 21, 1994, the applicant was found guilty of Possessing Controlled Drug and what appears to be two counts of Supplying Controlled Drug by the [REDACTED] Magistrates. He was fined and ordered to pay court costs.

The Misuse of Drugs Act of 1971, states in pertinent parts that:

4 Restriction of production and supply of controlled drugs.

(1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person—

(a) to produce a controlled drug; or

(b) to supply or offer to supply a controlled drug to another.

...

5 Restriction of possession of controlled drugs.

(1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.

(2) Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1) above.

(3) Subject to section 28 of this Act, it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 4(1) of this Act.

(4) In any proceedings for an offence under subsection (2) above in which it is proved that the accused had a controlled drug in his possession, it shall be a defence for him to prove—

(a) that, knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of preventing another from committing or continuing to commit an offence in connection with that drug and that as soon as possible after taking

possession of it he took all such steps as were reasonably open to him to destroy the drug or to deliver it into the custody of a person lawfully entitled to take custody of it; or

(b)that, knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of delivering it into the custody of a person lawfully entitled to take custody of it and that as soon as possible after taking possession of it he took all such steps as were reasonably open to him to deliver it into the custody of such a person.

Counsel, citing *Lennon v. INS*, 527 F.2d 187 (2d Cir. 1975), states that the applicant's convictions in violation of the United Kingdom's Misuse of Drugs Act of 1971 do not make him inadmissible because the section of the law under which the applicant was convicted makes guilty knowledge irrelevant and does not take into account innocent knowledge or medicinal use. She argues that the law under which the applicant's foreign conviction was prosecuted "must include the requisite intent necessary for a criminal conviction." However, the *Lennon* decision was distinguished on the issue of *mens rea* by the Board of Immigration Appeals (BIA) in *Matter of Esqueda*, which held that "since the language of the exclusion and deportation grounds of the Act relating to drug convictions was significantly broadened by the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207, immigration consequences may now result from a conviction under a law relating to a controlled substance that contains no element of *mens rea*." 20 I & N Dec. 850 (BIA 1994) (citing *Lennon v. INS*, 527 F.2d 187 (2d Cir. 1975), distinguished. It is no longer necessary to prove that *mens rea* was a necessary element of an offense in order for a drug conviction to make an alien subject to inadmissibility. 20 I & N Dec. at 850.

As result of the applicant's convictions, 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.<sup>1</sup>

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

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<sup>1</sup> Initially counsel also stated that section 212(a)(2)(A)(A)(i)(II) of the Act should not apply in this case because the applicant was admitted to the United States on the visa waiver program on August 7, 2007. Counsel argued that section 237(A)(2)(B) of the Act is the relevant statutory section to apply to the applicant's case. Although counsel did not pursue this argument in their follow-up brief on appeal, the AAO notes that section 237(a)(2)(B) of the Act is pertains to deportability, not inadmissibility and does not apply in this case insofar as the applicant is presently seeking adjustment of status before the U.S. Citizenship and Immigration Services.

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.

The record shows that the applicant has been convicted of multiple offenses applicant's violation of the United Kingdom's Misuse of Drugs Act of 1971. The applicant may be considered for a waiver of his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act if he was convicted of a single offense relating to simple possession of 30 grams or less of marijuana. As the applicant has been convicted of more than one offense involving the violation of a law or regulation of a State, the United States, or a foreign country relating to a controlled substance (marijuana), he is not eligible to apply for a waiver under section 212(h) of the Act and remains inadmissible under section 212(a)(2)(A)(i)(II) of the Act. 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 and stepson as a result of his inadmissibility; 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.

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.