

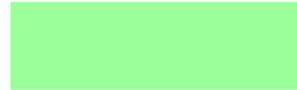


U.S. Citizenship
and Immigration
Services

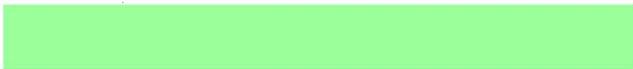
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Date: **JUN 14 2013** Office: SAN SALVADOR (PANAMA CITY)

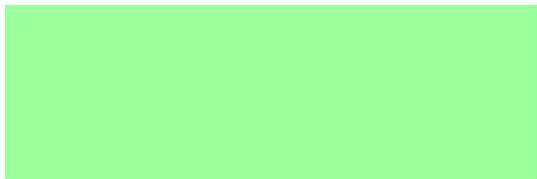


IN RE:



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

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant, a native and citizen of Colombia, was admitted to the United States as a lawful permanent resident in 1971 at the age of 10 years old. As a result of two criminal convictions the applicant was placed in removal proceedings in 1990, but granted relief under section 212(c) of the Act. In 1993, 1994, and 1997 the applicant was convicted of grand theft. On August 16, 2004, he was again placed into removal proceedings and ordered removed from the United States under section 237(a)(2)(A)(ii) of the Act, as a person who at any time after admission to the United States is convicted of two or more crimes involving moral turpitude not arising from the same scheme of criminal misconduct. On November 2, 2005, the BIA affirmed the immigration judge's decision to remove the applicant. The applicant departed the United States in 2009. In applying for an immigrant visa the applicant was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes 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 wife and two U.S. citizen children.

In a decision, dated September 3, 2012, the field office director found that the applicant had failed to show extreme hardship to a qualifying relative as a result of his inadmissibility and that he did not warrant the a favorable exercise of discretion. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly.

On appeal, counsel asserts that the applicant's spouse and children are suffering extreme hardship as a result of separation and will suffer extreme hardship if they relocate to Colombia.

The AAO conducts the final administrative review and enters the ultimate decision for U.S. Citizenship and Immigration Services on all immigration matters that fall within its jurisdiction. The AAO reviews each case *de novo* as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. *See Helvering v. Gowran*, 302 U.S. 238, 245-246 (1937); *see also, Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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

- (i) [A]ny 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 . . . is inadmissible.

- (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.

....

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)(I), (B), (D), and (E) or 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

The record indicates that the applicant was convicted of the following crimes: Obtaining Property in Return for a Worthless Check, on October 11, 1983; Possession of Cocaine, on July 5, 1988; and Grand Theft on June 1, 1993, December 12, 1994, and January 22, 1997.

A section 212(h) waiver is not available in section 212(a)(2)(A)(i)(II) cases involving controlled substances, unless the conviction relates to a single offense of possession of 30 grams or less of marijuana. In this case, the applicant was convicted of criminal possession of cocaine. Thus, the applicant is statutorily ineligible to be considered for a section 212(h) waiver.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant is also inadmissible for being convicted of crimes involving moral turpitude, whether the applicant has established extreme hardship to his U.S. citizen wife and/or children, or whether he merits the waiver as a matter of discretion.

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 (Form I-212) in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is 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. As the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act no purpose would be served in approving the applicant's Form I-212 application.

In proceedings for an application for 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. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. The appeal will be dismissed.

ORDER: The appeal is dismissed.