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

(b)(6)

U.S. Citizenship and Immigration Services

Date: MAR 07 2013 Office: ATHENS, GREECE FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and 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.

Thank you,

Michael Shumway

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO as a motion to reopen and a motion to reconsider. The motion will be dismissed. The underlying application will remain denied.

The applicant is a native of Morocco and a citizen of Israel who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. He was also found inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having been convicted of a crime involving a controlled substance and for having been convicted of crimes involving moral turpitude. The applicant is the spouse of a U.S. citizen and has a U.S. citizen son. He seeks waivers of inadmissibility under section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The Officer in Charge concluded that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability, accordingly. *Decision of the Officer in Charge*, dated May 27, 2008. On appeal, the AAO found the applicant to be statutorily ineligible for relief based on his conviction for possession of an unspecified controlled substance and that consideration of his inadmissibilities or his eligibility for waiver consideration would serve no purpose. *Decision of the AAO Chief*, dated July 6, 2011.

On motion, counsel submits evidence relating to the applicant's controlled substance offense. *Form I-290B, Notice of Appeal or Motion.*

The requirements for motions to reopen and reconsider are found at 8 C.F.R. §§ 103.5(a)(2) and (3):

> (2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence . . . .
>
> (3) *Requirements for motion to reconsider.* A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Section 212(a)(2) 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.

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

> The Attorney General [Secretary of Homeland Security] 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 AAO's prior finding that the applicant was ineligible for waiver consideration under section 212(h) of the Act was based on his failure to demonstrate that his controlled substance violation involved only the simple possession of 30 grams or less of marijuana. On motion, counsel submits a June 3, 2009 letter from an Israeli lawyer, to which is attached a copy of a November 27, 1979 verdict issued by District Court, Be'er Sheva (Israel). The verdict reflects that the applicant admitted to the "holding of a dangerous drug contrary to section 7(a) of Dangerous Drug Ordinance 1973" and that he was convicted of this offense.

In his letter to the applicant, states that section 7(a) of the Dangerous Drug Ordinance 1973 relates to drug possession for personal consumption and that the "second supplement" to the statute indicates that when the substance possessed is cannabis or hashish, the limit for personal consumption is 15 grams. then goes on to report the personal consumption limits indicated for other controlled substances: opium up to 2 grams; LSD up to 3 units; cocaine, heroin or morphine up to 0.3 grams; methadone up to 0.15 grams; pethidine up to 1 gram; and morphetamine, dexamphetamine or methamphetamine up to 0.2 grams.

Counsel asserts that the submitted documentation establishes that the applicant was convicted under an Israeli statute that punishes possession of up to 15 grams of cannabis and that he is, therefore, eligible for waiver consideration under section 212(h) of the Act. Even assuming that letter provides an accurate and authoritative description of section 7(a) of the Dangerous Drug Ordinance 1973, we find that it does not support counsel's claim. While does state that section 7(a) of the Dangerous Drug Ordinance punishes possession of up

to 15 grams of cannabis, he also indicates that this same statute may be used to prosecute possession of such controlled substances as opium, cocaine, heroin, morphine and methamphetamines. The submitted verdict establishes the applicant's controlled substance offense, but does not identify the controlled substance he was convicted of possessing. Therefore, these documents do not demonstrate, separately or collectively, that the applicant's controlled substance violation was limited to simple possession of no more than 30 grams of marijuana. Accordingly, the applicant has not established that he is eligible for waiver consideration under section 212(h) of the Act.

Based on our review of the record on motion, we find it does not establish that our prior decision was based on an incorrect application of law or Service policy. The motion will be dismissed, and the waiver application will remain denied.

In proceedings for an application for waiver of grounds of inadmissibility, 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.

ORDER: The motion is dismissed.