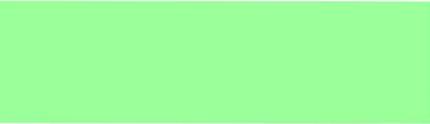


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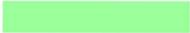


U.S. Citizenship
and Immigration
Services

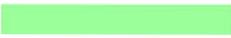


DATE: **MAR 08 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to 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 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


f. Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Taiwan who was found to be inadmissible to the United States pursuant to 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 been convicted of a controlled substance violation. The applicant is the parent of a U.S. citizen child. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in conjunction with an application for adjustment of status, in order remain in the United States.

The Field Office Director concluded that the applicant had not demonstrated statutorily eligibility for a waiver under section 212(h) of the Act, where he had failed to show that his controlled substance convictions involved a single offense of simple possession of 30 grams or less of marijuana. *Field Office Director's Decision*, dated June 10, 2011.

On appeal, the applicant appears to concede that no waiver is available to him to overcome his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act. However, he contends that his convictions appear to render him inadmissible under section 212(a)(2)(B) of the Act, for having been convicted of two or more offenses, where the aggregate sentences to confinement were five years or more. The applicant seeks consideration of his section 212(h) waiver application by asserting that inadmissibility under this latter section may be waived, even if his inadmissibility for a controlled substance conviction is not waivable.

The record of evidence includes, but is not limited to the applicant's statements; the applicant's passport; the applicant's tax returns; letters from the petitioner; numerous character reference letters; and the applicant's criminal history records. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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 –
 - ...
 - (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 record reflects that the applicant was last admitted to the United States on February 22, 2010 as a R-1 nonimmigrant religious worker for an authorized period until February 21, 2013. The record indicates that he has traveled to the United States on several prior occasions in that status. Criminal records indicate that the applicant was convicted at least nine times in Taiwan prior to his U.S. admissions. On August 27, 1979, the applicant was sentenced to one year imprisonment for violating the Act of Pharmacy and Druggist Administration by the Tainan Branch of Taiwan High Court. On August 12, 1982, he was sentenced to nine months imprisonment for violating the Act for the Management of Controlled Medicine (Controlled Medicine Act) by the Taiwan Kaohsiung

District Court. On June 29, 1983, the applicant received a six year sentence and a five year deprivation of civil rights by the Taiwan Kaohsiung District for violating the Controlled Medicine Act, which was later commuted to a three year term of imprisonment and two and half year deprivation of civil rights on September 7, 1988. On two separate occasions on January 22, 1990 and May 14, 1993, respectively, the applicant was sentenced to three years and four months imprisonment and a three year deprivation of civil rights for the offense of drug addiction. On April 17, 1993, he was sentenced to three months imprisonment (or a fine computed at a rate of 30 silver yuan per day) for violating the Controlled Medicine Act. On June 10, 1993, the applicant was sentenced to six months imprisonment (or a fine computed at a rate of 30 silver yuan per day) for violating the Controlled Medicine Act.

The applicant here, who is seeking admission to the United States, bears the burden of proof to establish that he is not inadmissible under any provision of the Act. INA § 291, 8 U.S.C. § 1361; *see also Matter of Rainford*, 20 I&N Dec. 598, 599 (BIA 1992) (burden of proving eligibility for adjustment of status is on the applicant). The applicant does not dispute that his convictions render him inadmissible under section 212(a)(2)(A)(i)(II), though the police criminal record certificate furnished by the applicant does not specify the underlying drugs involved. Accordingly, we do not disturb the director's determination of inadmissibility.

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . 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) . . .(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

The plain language of section 212(h) makes a waiver under that section unavailable to applicants who are inadmissible under section 212(a)(2)(A)(i)(II) of the Act because of a controlled substances conviction. However, there is a limited exception to this bar to waiver eligibility under section 212(h) where the controlled substance conviction relates to a single offense of simple possession of 30 grams or less of marijuana.

The record indicates that the United States Citizenship and Immigration Services (USCIS) Field Office issued a Request for Further Evidence, dated December 21, 2010, in this case, requesting records indicating the final dispositions for all of the applicant's convictions. In particular, the notice requested certified court dispositions where a criminal matter proceeded to court action, and indicated that certified records should identify the "citation, charge, complaint, disposition, and sentence for any and all arrests, even if the arrest has been expunged." The applicant produced the police criminal record certificate previously noted, which summarized his criminal history, setting forth his convictions and sentences. However, he did not produce certified court records or other records setting forth the

specificities requested by USCIS. The Field Office Director subsequently found that the applicant had not demonstrated threshold eligibility for a section 212(h) waiver, where he had not provided substantive evidence that the underlying drug involved in the applicant's convictions was marijuana and that the amount was 30 grams or less of that drug. On appeal, the applicant still has not produced such evidence to demonstrate statutory eligibility for the waiver.

The applicant was therefore given notice at least on two occasions prior to this appeal of the documents that would be required to demonstrate eligibility for the waiver application, but has failed to do so. Moreover, it appears, on appeal, that the applicant concedes that he is in fact ineligible for a section 212(h) waiver to overcome his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act for his controlled substance conviction. Thus, we find no error in the director's determination that the applicant is statutorily ineligible for a waiver under section 212(h) of the Act.

The applicant, however, seeks consideration of his waiver application by asserting that his apparent inadmissibility under section 212(a)(2)(B) of the Act can be waived by a section 212(h) waiver. Even presuming that the applicant's convictions render him inadmissible under section 212(a)(2)(B) of the Act and that a 212(h) waiver is granted with respect to that ground of inadmissibility, we note that the applicant would still remain inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act for his controlled substance convictions, for which there is no waiver.

Accordingly, the AAO concurs with the determination of the director that, based on the nature of applicant's inadmissibility to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, he has failed to establish statutory eligibility for a waiver of that ground of inadmissibility under section 212(h) of the Act. Consequently, no purpose is served in adjudicating a waiver of inadmissibility for inadmissibility under section 212(a)(2)(B) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.