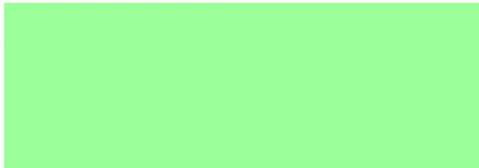




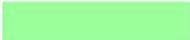
U.S. Citizenship
and Immigration
Services

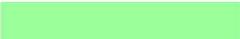
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Date: **MAR 11 2013**

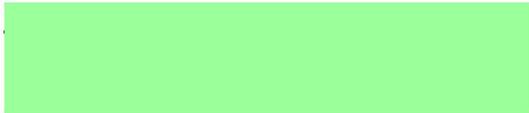
Office: **MANILA, PHILIPPINES**

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 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

(b)(6)

DISCUSSION: The application was denied by the Field Office Director, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Fiji 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 three controlled substance violations. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse.

In a decision, dated August 4, 2011, the field office director found that the applicant was inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act for having been convicted of three controlled substance violations. The field office director found that the applicant was statutorily ineligible for a waiver under section 212(h) of the Act and denied the application accordingly. The field office director noted in his decision that the applicant was also inadmissible under section 212(a)(9)(B)(i)(II) of the Act 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 and under section 212(a)(9)(A)(ii) of the Act as a result of his removal from the United States. The field office director found that no purpose would be served in discussing the applicant's eligibility for a waiver of these inadmissibilities because he was statutorily ineligible for a waiver of his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act.

On appeal, counsel asserts that the field office director erred in denying the applicant's waiver application based on a belief he was convicted for three controlled substance violations. He states that the applicant submits that his convictions qualify as an offense of simple possession of thirty grams of marijuana or less. Counsel submits no additional evidence on appeal.

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),

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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

....

(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 record indicates that the applicant's has three convictions related to a controlled substance. On March 4, 1992, the applicant was convicted of possession of drug paraphernalia and for violation of a controlled substance. On June 30, 1994, the applicant was convicted of possession of marijuana, forty grams or less. Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of violations of laws relating to a controlled substance.

A section 212(h) the Act waiver of the bar to admission, resulting from the violation of section 212(a)(2)(A)(i)(II) of the Act, is only available for offenses that relate to a single offense of simple possession of 30 grams or less of marijuana. In this case, the applicant was convicted on two separate occasions of a total of three controlled substance offenses. 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 the applicant's other grounds of inadmissibility, whether the applicant has established extreme hardship to his U.S. citizen wife, or whether he merits a waiver as a matter of discretion.

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.

ORDER: The appeal is dismissed.