



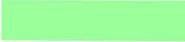
U.S. Citizenship
and Immigration
Services

(b)(6)

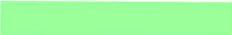


Date: **MAR 27 2013**

Office: LIMA, PERU

FILE: 

IN RE:

Applicant: 

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:

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 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 waiver application was denied by the Field Office Director, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Brazil who was found to be inadmissible to the United States pursuant to section 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B), due to multiple criminal convictions. The applicant's parents are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The field office director concluded that the applicant established extreme hardship on a qualifying relative, but denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) as a matter of discretion. *Decision of the Field Office Director*, dated October 26, 2011.

On appeal, the applicant asserts that an error in listing the amount of marijuana from his criminal history was made by the field office director; he has not consumed alcohol since 2002; he has not had any criminal behavior since being removed; and he details the reason why his siblings cannot care for his parents. *Form I-290B Attachment*, dated November 23, 2011.

The record includes, but is not limited to, the applicant's statement and criminal record. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(B) of the Act, states:

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

As the applicant has not contested his inadmissibility on appeal, and the record does not show that determination to be in error, we will not disturb the finding of inadmissibility under section 212(a)(2)(B) of the Act.

The record reflects that the applicant was convicted of Misconduct Involving a Controlled Substance in the Sixth Degree in violation of Alaska Statutes Section 11.71.060(a)(1) on May 28, 1993 and July 30, 1993. As such, the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1181(a)(2)(A)(i)(II). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Field Office does not identify all of the grounds for denial in the initial decision. *See 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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Section 212(a)(2)(A)(i)(II) of the Act states:

(b)(6)

(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 a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance... is inadmissible.

Section 212(h) of the Act provides that:

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (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

As the applicant has multiple controlled substance violations, he is not eligible to file for a section 212(h) waiver of his section 212(a)(2)(A)(i)(II) inadmissibility. Therefore, no purpose would be served in adjudicating his section 212(h) waiver of his section 212(a)(2)(B) inadmissibility. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.