



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: OCT 03 2013

Office: CHICAGO

FILE: [REDACTED]

IN RE: [REDACTED]

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:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago, Illinois, denied the waiver application. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed.

The applicant is a native and citizen of India who was found to be inadmissible under 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 violated a law relating to a controlled substance. The applicant was also found inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed a crime 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 parents.

On June 16, 2012, the Field Office Director determined that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The Field Office Director also noted that the application would be denied as a matter of discretion. The applicant, through counsel, appealed that decision and the appeal was dismissed by the AAO on June 4, 2013.

On motion,¹ counsel for the applicant states that the evidence demonstrates that the applicant's U.S. citizen parents will suffer extreme hardship as result of the applicant's inadmissibility and that it "was an abuse of discretion to deny the I-601."

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. 8 C.F.R. § 103.5(a)(2). 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 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Counsel also fails to establish that the prior AAO decision was based on any incorrect application of law or policy. The motion will be dismissed.

Section 212(a)(2)(A) 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-

¹ Counsel filed Form I-290B indicating that he was filing an "appeal" of the AAO's June 4, 2013 decision and that a brief and/or additional evidence would be submitted to the AAO within 30 days. There is nothing in the regulations allowing for an administrative appeal of an AAO decision. The appeal, however, will be treated as a motion. Moreover, the AAO notes that no brief or additional evidence was submitted to the AAO.

...
(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.

On March 3, 2010, the applicant was convicted of Possession of Cannabis, in violation of 720 Ill. Comp. Stat. 550 section 4(b). The records indicate that the applicant was fined \$295 as a result of the conviction. He is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a crime involving a controlled substance. On motion, counsel states that the applicant's conviction was "for a very small amount of cannabis" and "does not warrant a denial of this waiver," but does not provide any support for this position. The amount of cannabis is only relevant insofar as it determines whether the applicant is eligible to apply for a waiver of his controlled substance conviction under section 212(h) of the Act.

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (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 if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 . . .; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Because the applicant's conviction involved less than 30 grams of marijuana, he is eligible to apply for a waiver. He must, however, still meet the criteria for the waiver, which in his case, is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. The applicant's only qualifying family members are his U.S. citizen parents.

The record also indicates that on October 15, 1999, the applicant was convicted for soliciting a prostitute in violation of 720 Ill. Comp. Stat. 5/11-15(a)(1). As a result of that conviction, the applicant was sentenced to three months of court supervision. The AAO found that based on that conviction, the applicant was also inadmissible under section 212(a)(2)(A)(i)(I) of the Act. On motion, counsel argues that the applicant's conviction for solicitation occurred in 1999; however, under section 212(h) of the Act the date of occurrence of the activities which result in the applicant's inadmissibility is only relevant after 15 years. The record does not establish that 15 years have passed since the date of the activities that led to the applicant's inadmissibility. As such, the applicant must still meet the extreme hardship standard as a result of his conviction. Again, the applicant's only qualifying relatives are his U.S. citizen parents. On motion, counsel argues that the applicant does not have family ties in India and that his siblings are U.S. citizens. Hardship to the applicant or the applicant's U.S. citizen siblings, however, can only be considered insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and the AAO then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). On motion, counsel states that the applicant is remorseful and "would never again engage in any criminal activity," however, discretionary factors such as these are not considered until the applicant first establishes extreme hardship to a qualifying relative.

In regards, to extreme hardship, on motion, counsel states that "the applicant's parents whom are U.S. citizens would clearly suffer extreme hardship for personal, financial, health, as well as personal considerations." Counsel further states that the applicant's parents reside with him and that he provides "their necessities of life." He also states that the applicant's mother's health "has deteriorated and she is suffering depression, stress, and anxiety" over the applicant's immigration case. Counsel cites "*Salameda v. INS*, 78 3d 447 (7th Cir. 1995),"² stating that "hardships when considered cumulatively amount to extreme hardship." No new evidence to support these statements was submitted on motion. The AAO properly analyzed the hardship to the applicant's qualifying relatives, his U.S. citizen parents, in our prior decision and there is no basis provided on motion to disturb our previous finding that the evidence in the record, when considered in the aggregate, does not indicate that the hardship to the applicant's qualifying relatives due to either

² The citation provided by counsel is not valid, however, the AAO was able to locate *Salameda v. INS*, 70 F.3d 447 (7th Cir. 1995), regarding eligibility for suspension of deportation under former section 244(a)(1) of the Immigration and Nationality Act, a section which no longer exists. *Salameda* is applicable to the present case insofar as it establishes that the community ties of the qualifying relative are relevant to the hardship that they would suffer as a result of the applicant's inadmissibility. In our prior decision, the AAO considered the evidence of record establishing the applicant's U.S. citizen parents' ties to the United States, which included the applicant's mother's medical treatment and the existence of her other children in the United States.

separation from the applicant or relocation to India would amount to extreme hardship. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882).

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.