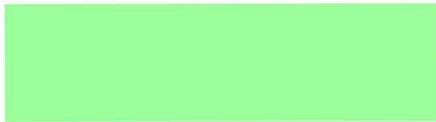


(b)(6)

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



U.S. Citizenship
and Immigration
Services



DATE: SEP 05 2013

OFFICE: ATLANTA, GEORGIA

File: [Redacted]

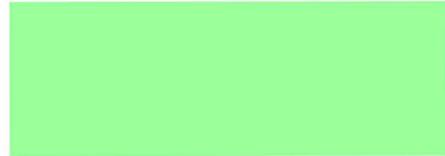
IN RE:

Applicant: [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:



INSTRUCTIONS:

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,

A handwritten signature in cursive script that reads "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Jamaica 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 crimes involving a controlled substance.¹ He is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated June 6, 2012.

On appeal, counsel submits additional evidence and contends that if a waiver is not granted, the applicant's qualifying relative spouse, stepdaughter, and mother will experience extreme hardship. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received July 5, 2012.

The record contains, but is not limited to: Form I-290B and counsel's statement thereon; various immigration applications and petitions; a hardship affidavit from the applicant's spouse; medical and guardianship records for the applicant's spouse's daughter; medical records for the applicant's mother and a letter from the applicant's mother and father; a letter from the applicant; numerous letters of character reference and support; federal income tax returns; divorce, marriage and birth certificates; documents related to the applicant's terminated removal proceedings; and documents related to the applicant's criminal record. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(2) of the Act states in pertinent part:

Criminal and related grounds. —

(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

¹ The field office director appears to conflate inadmissibility under section 212(a)(2)(A)(i)(I) of the Act with inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, finding that the applicant is inadmissible "pursuant to section 212(a)(2)(A)(i)(II) of the Act as an alien convicted on a crime involving moral turpitude." While section 212(a)(2)(A)(i)(I) of the Act renders inadmissible an alien convicted of a crime involving moral turpitude, section 212(a)(2)(A)(i)(II) of the Act renders inadmissible an alien convicted of crimes involving a controlled substance. In the present case, the AAO finds that the applicant has clearly been convicted of crimes involving a controlled substance, rendering him inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

admits committing acts which constitute the essential elements of –

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
- (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.

...

(C) CONTROLLED SUBSTANCE TRAFFICKERS- Any alien who the consular officer or the Attorney General knows or has reason to believe--

- (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so . . . is inadmissible.

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

The Attorney General 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 record shows that the applicant pled guilty on August 21, 1996 and was convicted in the Superior Court of [REDACTED] Georgia, to three counts of Violation of the Georgia Controlled Substance Act (VGCSA), for his conduct on October 16, 1995, October 20, 1995 and October 24, 1995. The applicant was sentenced to one year confinement, four years of probation, and various fines, fees and costs. Based upon the foregoing, the field office director determined that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The AAO concurs that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of crimes relating to a controlled substance. While the controlled substance involved was marijuana, the applicant does not meet the waiver provision found in section 212(h) of the Act, as his conviction does not relate to a single offense of simple possession of 30 grams or less of marijuana. The three-count indictment to which the applicant plead guilty indicates that he “did knowingly and unlawfully sell and deliver” marijuana on three separate occasions in October 1995, and that the marijuana sold and delivered on each occasion was not “the same marijuana as in any other count

in this indictment.” Thus while the applicant has only one controlled substance-related conviction, it does not relate to a single offense, but three, and these do not relate to simple possession of 30 grams or less of marijuana.

The AAO notes that the applicant is also inadmissible under section 212(a)(2)(C) of the Act. For an applicant to be inadmissible under section 212(a)(2)(C) of the Act, the only requirement is that an immigration officer “knows or has reason to believe” that the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled, or endeavored to do so. Section 212(a)(2)(C) of the Act; *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9th Cir. 2000). In order for an immigration officer to have sufficient “reason to believe” that an applicant has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by “reasonable, substantial, and probative evidence.” *Id.* (citing *Hamid v. INS*, 538 F.2d 1389, 1390-91 (9th Cir.1976)). In the present matter, the three-count indictment to which the applicant plead guilty indicates that he did knowingly and unlawfully sell and deliver marijuana in violation of the Georgia Controlled Substances Act on October 16, 1995, October 20, 1995 and October 24, 1995. Accordingly, there is sufficient reason to believe that the applicant has been involved in the illicit trafficking in a controlled substance, rendering him inadmissible under section 212(a)(2)(C)(i) of the Act. Specifically, there is reasonable, substantial, and probative evidence to support the belief that he has been an illicit trafficker in a controlled substance. *See Alarcon-Serrano v. I.N.S.* at 1119. The AAO notes that even if the applicant had not engaged in trafficking of a controlled substance rendering him inadmissible under section 212(a)(2)(C), the record is clear that he was convicted for crimes related to a controlled substance rendering him inadmissible under section 212(a)(2)(A)(i)(II), and that he does not qualify for consideration for a waiver under section 212(h) of the Act as his conviction does not relate to a single offense of simple possession of 30 grams or less of marijuana.

Because the applicant is statutorily ineligible for relief under the provisions described, no purpose would be served in discussing whether he has demonstrated rehabilitation, whether he has established extreme hardship to a qualifying relative, or whether he merits a waiver as a matter of discretion.

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 been met.

ORDER: The appeal is dismissed.