



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: SEP 10 2013

Office: LONDON

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, London, England, 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 granted and the prior AAO decision will be affirmed.

The applicant is a native and citizen of Ireland 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 spouse and daughter.

On May 29, 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 accordingly. The applicant, through counsel, timely filed an appeal of that decision and the appeal was dismissed by the AAO on June 4, 2013.

The applicant, through counsel, timely filed a motion to reopen the AAO's decision, submitting new court records, and stating that the applicant's convictions have been vacated and he is no longer inadmissible to the United States.

In support of the waiver application, the record includes, but is not limited to a brief by the applicant's counsel, biographical information for the applicant and his U.S. citizen spouse, a statement from the applicant, a statement from the applicant's spouse, medical and psychological records for the applicant's spouse, limited financial information for the applicant's spouse, documentation regarding the applicant's employment and unemployment, documentation regarding the spouse's mother, country conditions information for Ireland, and documentation of the applicant's criminal and immigration history.

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). The applicant has stated new facts and provided documentation in support of those new facts. The application will be reopened, but the appeal ultimately remains dismissed as set forth below.

The applicant was found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a crime involving a controlled substance as a result of his July 16, 2002 conviction for Unlawful Possession of Drugs Contrary to Section 3 of the Misuse of Drugs Act of

Ireland. The applicant was prosecuted for possession of 7.793 grams of cannabis resin, the equivalent, for waiver purposes, of 46.758 grams of marijuana. *See United States Sentencing Commission Supplement to the 2000 Guidelines Manual*, dated May 1, 2001, Drug Equivalency Table; *see also General Counsel's Opinion 96-3, Section 212(h) Waiver for Controlled Substance Violations-Forms of Marijuana Other than Marijuana Leaves*, dated April 23, 1996. As noted in our prior decision, inadmissibility under section 212(a)(2)(A)(i)(II) of the Act may be waived under 212(h) of the Act only as it relates to the simple possession of 30 grams or less of marijuana. Accordingly, based on the information in the record, he is not eligible for the limited waiver available for marijuana possession in section 212(h). The applicant was also found to be inadmissible under Section 212(a)(2)(A) of the Act, for having committed a crime involving moral turpitude, as a result of his three convictions for violating Section 3 of the Non Fatal Offences against the Person Act of 1997 of Ireland, Assault Causing Harm.¹ The application was dismissed as a result of the applicant's ineligibility for a waiver. The AAO also noted that the applicant had not established extreme hardship to a qualifying relative.

On motion, in regards to the applicant's July 16, 2002 conviction for Unlawful Possession of Drugs Contrary to Section 3 of the Misuse of Drugs Act of Ireland, as a result of which he was found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act and ineligible for a waiver, counsel submitted documentation from the Circuit Court, Eastern Circuit, County Meath, Ireland, dated April 4, 2013, stating that:

[The applicant] was convicted in Dunshaughlin District Court on 16/7/2002 (District Court Case No [REDACTED]) of an Offense Contrary to Section 3 and Section 27 (as amended by Section 6 of the Misuse of Drugs Act, 1984) of the Misuse of Drugs Act 1977, namely Cannabis. The District Court judge imposed a fine of €380.00 and allowed [the applicant] 60 days to pay, 20 days in default.

[The applicant] appealed the conviction above to the Circuit Court (Circuit Court Reference [REDACTED]) and the matter was heard in Trim Circuit Court on 20th March 2013. The Circuit Court Judge ordered that the appeal be allowed.

As a result of the Circuit Court order, the fine of €380.00 which was paid by [the applicant] on 10/9/2002 was refunded to him on 9th April, 2013.

The applicant also submitted documentation in regards to six other convictions, which simply states that appeals of those convictions had been recently allowed and the convictions were reversed. This documentation was accompanied by a Police Certificate from the Garda Siochana, dated May 2, 2013, stating that the applicant has not been convicted of a crime while residing in Ireland.

¹ The record indicates that the applicant was arrested on six occasions between July 17, 2000 and February 9, 2010, resulting in more than six convictions. The other convictions involved Threatening/Abusive/Insulting Behavior in a Public Place contrary to section 6 of the Criminal Justice (Public Order) Act, 1994.

Under the current statutory definition of “conviction” provided at section 101(a)(48)(A) of the Act, no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Any subsequent, rehabilitative action that overturns a state conviction, other than on the merits or for a violation of constitutional or statutory rights in the underlying criminal proceedings, is ineffective to expunge a conviction for immigration purposes. *Id.* at 523, 528. In *Matter of Pickering*, the Board of Immigration Appeals reiterated that if a court vacates a conviction for reasons unrelated to a procedural or substantive defect in the underlying criminal proceedings, the alien remains “convicted” for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003).

The record does not indicate the basis for the reversals of the applicant’s conviction. We are also uncertain of the precise nature of the proceedings whereby this relief was obtained, as there is no indication of an appeal of the applicant’s conviction in the decade following it. There is nothing in the record to show any of the reversals were based on a defect in the conviction or in the proceedings underlying the conviction. Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is on the applicant to establish that he is not inadmissible or, if inadmissible, that she is eligible for a waiver of that inadmissibility and should be granted the waiver as a matter of discretion. As the applicant has not provided a court document illustrating the basis for reversals of his convictions, and in the case of the possession conviction, the basis for the return of his fine, the applicant has not met his burden of proof to show that his convictions are no longer valid for immigration purposes. The applicant remains “convicted” within the meaning of section 101(a)(48)(A) of the Act. The applicant is not eligible for a waiver of inadmissibility as he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a violation of controlled substance law involving the equivalent of more than 30 grams of marijuana.

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.

ORDER: The prior decision of the AAO is affirmed.