



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **SEP 18 2013**

OFFICE: ANAHEIM

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:

SELF-REPRESENTED

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 black ink that reads "Michael Shumway".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, and section 212(a)(2)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. He is the spouse of a U.S. citizen and 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 because the applicant is statutorily inadmissible as a result of his conviction for a crime relating to a controlled substance, no purpose would be served in adjudicating his application for a waiver of a crime involving moral turpitude. *See Decision of the Field Office Director*, dated March 4, 2013. The field office director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Id.* The field office director concurrently denied the applicant's Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212). *Id.*

On appeal, the applicant contends that he has resided in Mexico since his removal in 1996 and if a waiver is not granted his U.S. citizen spouse and children will experience extreme hardship. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received April 4, 2013.

The record contains, but is not limited to: Form I-290B and the applicant's statement thereon; various immigration applications and petitions; a letter from the applicant; hardship letters from the applicant's spouse; numerous letters of character reference and support; medical records; employment and financial records; school-related records for the applicant's children; birth and marriage certificates; and documents related to the applicant's criminal record and rehabilitation. 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 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.

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 was arrested in California on May 9, 1995 and charged with using and being under the influence of a controlled substance, heroin. The applicant was subsequently convicted and sentenced to 120 days in jail and 24 months of probation. The record indicates that the applicant was previously removed from the United States in 1994 as a result of his heroin use and then re-entered the United States without inspection in 1995. The applicant was removed from the United States a second time in December 1996 and he indicates that he has resided in Mexico since then. 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 a crime relating to a controlled substance. The applicant does not meet the waiver provision found in section 212(h) of the Act, as his controlled substance conviction relates to heroin, and not to a single offense of simple possession of 30 grams or less of marijuana.

The applicant's conviction for using and being under the influence of heroin constitutes a crime related to a controlled substance and renders him inadmissible under section 212(a)(2)(A)(i)(II) of the Act. Because his conviction relates to heroin and not to a single offense of simple possession of 30 grams or less of marijuana, he does not qualify for the waiver found in section 212(h) of the Act.

Because the applicant is statutorily ineligible for relief under section 212(a)(2)(A)(i)(II) of the Act, 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.

The AAO notes that the field office director denied the applicant's Form I-212 in the same decision denying the applicant's Form I-601. The AAO has dismissed the appeal of the Form I-601 application. An application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. *Matter of*

(b)(6)

*NON-PRECEDENT DECISION*

Page 4

*Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964). As the applicant remains inadmissible under section 212(a)(2)(A)(i)(II) of the Act, no purpose would be served in approving the applicant's Form I-212.

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 appeal is dismissed.