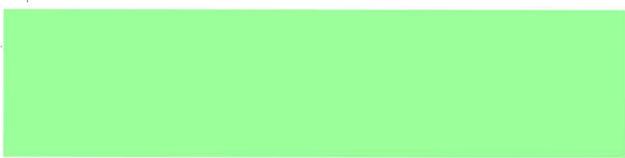
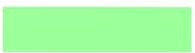


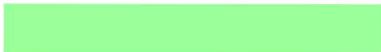


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **SEP 18 2013** OFFICE: NEBRASKA SERVICE CENTER 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:

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 Nebraska Service Center Director denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic 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 a crime involving a controlled substance and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. He is the son of a lawful permanent resident. 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 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 Service Center Director*, dated October 23, 2012. The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Id.*

On appeal the applicant asserts that United States Citizenship and Immigration Services (USCIS): (1) misapplied the statute concerning his marijuana conviction; (2) incorrectly determined that he is inadmissible under sections 212(a)(2)(A)(i)(I), 212(a)(2)(C) and 212(a)(2)(A)(i)(II) of the Act when the U.S. Embassy found he is only inadmissible under 212(a)(2)(A)(i)(II); and (3) it is unfair for USCIS to first find that he is eligible to apply for a waiver and later to determine that he is not. *See the Applicant's Argument in Support of Appeal*, received November 22, 2012.

The record contains, but is not limited to: Form I-290B and the applicant's argument in support of appeal; Form I-601; a letter from the U.S. Embassy Santo Domingo, Dominican Republic; a hardship letter from the applicant's mother; an electronic filing notice from the U.S. District Court for the Eastern District of New York; and medical-related documents. 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.

...
(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 indicates that on September 11, 1989 the applicant was arrested and charged in the Dominican Republic with possession of marijuana, one portion of 300 grams and one portion of 900 milligrams. The applicant was found guilty and sentenced to 3 years in prison and a monetary fine. Based upon the foregoing, the director determined that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act and does not qualify for the waiver provision in section 212(h) of the Act, as his controlled substance conviction does not relate to a single offense of simple possession of 30 grams or less of marijuana.

The applicant contends that the current version of section 212(a)(2)(A)(i)(II) of the Act does not apply to his September 1989 marijuana conviction and that the law cannot be applied retroactively. The applicant offers no supporting legal precedent or foundation and the AAO finds his assertions unpersuasive. 22 C.F.R. § 40.21(b)(1) specifically addresses the applicability of section 212(a)(2)(A)(i)(II) of the Act to criminal convictions, irrespective of date:

Date of conviction not pertinent. An alien shall be ineligible under INA 212(a)(2)(A)(i)(II) irrespective of whether the conviction for a violation of or for conspiracy to violate any law or regulation relating to a controlled substance, as

defined in the Controlled Substance Act (21 U.S.C. 802), occurred before, on, or after October 27, 1986.

The AAO finds, therefore, that the applicant's September 1989 conviction for possession of one portion of 300 grams of marijuana and one portion of 900 milligrams of marijuana constitutes a crime related to a controlled substance, rendering him inadmissible under section 212(a)(2)(A)(i)(II) of the Act. Because the applicant's conviction does not relate 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.

The applicant references the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Section 435(a), 110 Stat. at 1274, and avers that it does not apply to his case. The AAO agrees to the extent that the AEDPA does not address or amend inadmissibility under section 212(a)(2)(A)(i)(II) of the Act or a waiver of inadmissibility under section 212(h) of the Act, and the section of the AEDPA to which the applicant refers concerns criminal offenses in the deportability context. Accordingly, the AAO will not further address the AEDPA as its applicability and/or retroactivity have no bearing on the matter before us.

The AAO acknowledges that while a consular officer initially found the applicant inadmissible under section 212(a)(2)(C) for trafficking of a controlled substance, and section 212(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude, these inadmissibility findings were later withdrawn by the U.S. Embassy, Consular Section, Santo Domingo, Dominican Republic, in a letter dated May 10, 2012. The record is clear, however, that the applicant was convicted of a crime related to a controlled substance rendering him inadmissible under section 212(a)(2)(A)(i)(II), and 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 a waiver under section 212(h) of the Act, the AAO will not analyze whether his conviction also constitutes a crime involving moral turpitude rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act or whether he was engaged in trafficking of a controlled substance rendering him inadmissible under section 212(a)(2)(C) 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.

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.