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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 19 2014 Office: DETROIT

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(2)(A)(ii) the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(ii) and Section 212(h) of the Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, Detroit, Michigan denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom, who was admitted on April 9, 2012 for six months to the United States as a nonimmigrant B-2 visitor using a section 212(d)(3)(A)(i) nonimmigrant waiver of inadmissibility. He was found to be inadmissible to the United States 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 been convicted of crimes relating to a controlled substance.[1] The applicant seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

The field office director concluded the applicant's controlled substance violations subject him to grounds of inadmissibility for which no waiver is available and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director,* August 9, 2013.

On appeal, the applicant asserts that USCIS erred by failing to properly apply the extreme hardship standard. In support of the appeal, the applicant submits ten exhibits of further hardship evidence. The record also contains documentation submitted in support of the original waiver application. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A) of the Act provides, in pertinent part:

> (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—
>
> . . . .
>
> (II) a violation of … 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(a)(2)(C) of the Act provides, in pertinent part:

---

[1] The applicant was also found by a consular officer to be inadmissible under section 212(a)(2)(C)(i) the Act, 8 U.S.C. § 1182(a)(2)(C)(i), for being a controlled substance trafficker, though the Field Office Director does not reference this finding in his decision.

(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.

is inadmissible.

The record establishes that the applicant was convicted on October 12, 1998 in the [redacted] of three counts of supplying a controlled drug, amphetamine, and one count of possession of cannabis resin, a class B drug. He was also convicted on February 7, 2003 in the [redacted] of possession of cannabis resin.

As noted above, the applicant was found by a consular officer to be inadmissible under section 212(a)(2)(C)(i) the Act for being a controlled substance trafficker, and there is no waiver available for inadmissibility under section 212(a)(2)(C)(i) of the Act. Further, even if the applicant were not inadmissible under this section, the applicant remains inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act. The only waiver available for this ground of inadmissibility is outlined in section 212(h) of the Act.

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

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 . . . .

A waiver is not available for inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, except for a single offense of simple possession of 30 grams or less of marijuana. As the applicant was twice convicted of possession of cannabis resin and was also convicted of supplying amphetamine, he is not eligible for a waiver under section 212(h) of the Act.

Where the applicant is statutorily ineligible for a waiver under section 212(h) of the Act, the field office director properly denied the Form I-601. Because the applicant is statutorily ineligible for a waiver of criminal grounds of inadmissibility, no purpose would be served in considering his extreme hardship claims.

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, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.