



**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(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

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 waiver application was denied by the Field Office Director, Detroit, Michigan, 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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a controlled substance violation. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 19, 2013.

On appeal, counsel asserts that the evidence does not support a finding that the applicant's conviction for Domestic Violence was a crime of violence and thus, the conviction cannot be considered a crime involving moral turpitude. Counsel further contends that the applicant's marijuana conviction involved less than 30 grams. Finally, counsel maintains that the evidence in the record establishes that the applicant's U.S. citizen spouse and children would experience extreme hardship were the applicant's Form I-601 denied. In support, counsel has provided a brief. The entire record was reviewed and considered in rendering this decision on the appeal.

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

- (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 a 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.
 - (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

- (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or
- (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) 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

- (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 . . . ; and

- (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The record establishes that the applicant was convicted, in December 1990 in the 346 District of [REDACTED] of the Texas Penal Code, based on an October 20, 1990 offense. In 1996, the applicant pled guilty to Domestic Violence in the State of Michigan based on a February 1996 offense. In August 1998, the applicant was convicted of Possession of Marijuana, a violation of section 333.7403 of the Michigan Code, in the City of [REDACTED] 54-A Judicial District, based on a January 1997 offense.

To begin, counsel maintains that the applicant's burglary conviction was based on acts committed by the applicant when he was 17 years old and thus, the conviction does not render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Section 212(a)(2)(A)(ii) of the Act, referencing an exception for convictions for crimes involving moral turpitude for individuals who committed the acts before turning 18 years old, is only applicable if the individual has committed only one crime involving moral turpitude. With respect to the burglary conviction, as it occurred more than 15 years ago, he may be eligible for a waiver under section 212(h)(1)(A). However, the applicant was also convicted of Domestic Violence. The record is devoid of the facts and circumstances of the offense of domestic violence. The only document submitted by the applicant is a Register of Action confirming a conviction for Domestic Violence in April 1996. This document does not cite to a statute and thus, the record does not establish that the conviction did not involve acts involving moral turpitude. While on appeal counsel quotes a statute and states that the statute does not meet the federal definition of crime of violence and should not be considered a crime of moral turpitude, no supporting documentation has been provided to establish under what statute the applicant was convicted to substantiate counsel's 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. Counsel has failed to establish that the applicant's conviction for Domestic Violence did not involve acts involving moral turpitude. As such, the applicant has not established that section 212(a)(2)(A)(ii) of the Act is applicable to him. The applicant is thus inadmissible under section for both his burglary conviction and his domestic violence conviction pursuant to 212(a)(2)(A)(i)(I) of the Act.¹

¹ The record establishes that in the field office director's decision to deny the applicant's I-485, the field office director stated that "since the crime of burglary was committed when you were 17 years old, it does not make you inadmissible...." See *Decision to Deny the Applicant's I-485*, dated July 19, 2013. In the Notice of Intent to Deny the I-485, the field office director stated that since the burglary conviction was not the only crime committed by the applicant, he was in fact inadmissible for that conviction under section 212(a)(2)(A)(ii) of the Act, irrespective of the age of the applicant at the time of the offense. The field office director did not address whether the applicant's conviction for

With respect to the applicant's conviction for Possession of Marijuana, the applicant has the burden of proving eligibility for the benefit of a waiver of inadmissibility. *See* Section 291 of the Act; *see also* 8 C.F.R. 103.2(b). The Board, moreover, has held that the applicant has the burden of showing that his or her marijuana conviction is within the scope of the Act's ameliorative provisions for cases involving 30 grams or less. *Matter of Grijalva*, 19 I&N Dec. 713, 718 n. 7 (BIA 1988)("[W]here the amount of marijuana that an alien has been convicted of possessing cannot be readily determined from the conviction record, the alien who seeks section 241(f)(2) relief must come forward with credible and convincing testimony, or other evidence independent of his conviction record, to meet his burden of showing that his conviction involved "30 grams or less of marihuana"); *cf. Matter of Davey*, 26 I&N Dec. 37, 38-39 (BIA 2012) (applying a "circumstance-specific" inquiry to section 237(a)(2)(B)(i) of the Act, 8 U.S.C. § 1227(a)(2)(B)(i), to find that convictions for two offenses – possession of marijuana and possession of drug paraphernalia – may be considered a "single" offense of possession). Despite requests by the field office director to the applicant requesting documentation that established the exact amount of marijuana possessed by the applicant that led to his conviction, the only documentation provided by counsel, a Register of Action, does not establish the specific amount of marijuana that the applicant was convicted of possessing. As noted above, the applicant has the burden of showing that his or her marijuana conviction is within the scope of the Act's ameliorative provisions for cases involving 30 grams or less. The applicant has not established that his conviction for marijuana possession involved less than 30 grams. Counsel's assertion on appeal that the applicant was found in possession of a small baggie which counsel believes would suggest the amount to be less than 30 grams does not suffice to establish eligibility. The record establishes that the applicant was convicted of Marijuana Possession, and as such, based on the record, the applicant is not eligible for a waiver under section 212(h) of the Act.

The applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, for having been convicted of a controlled substance violation. The record does not establish that the applicant is eligible for a waiver under section 212(h) as it has not been established that the applicant's conviction for marijuana possession involved less than 30 grams, irrespective of the fact that the offense occurred more than 15 years ago.

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.

domestic violence pertained to acts involving moral turpitude. As noted above, the burden is on the applicant to establish eligibility for a waiver. As counsel has not established that the applicant's conviction for domestic violence did not involve acts of moral turpitude, the applicant has not established that section 212(a)(2)(A)(i)(I) is applicable to him.