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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: FEB 25 2014 Office: MIAMI (WEST PALM BEACH) 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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Miami, Florida, denied the waiver application. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter was before the AAO on motion and the motion was dismissed. The matter is again before the AAO on motion. The motion is dismissed.

The applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States under section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(C), concerning controlled substance traffickers. The applicant is married to a U.S. citizen and is the mother of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) in order to remain in the United States with her spouse and child.

On October 5, 2007, the District Director concluded that the applicant was inadmissible under section 212(a)(2)(C) of the Act and was not eligible for a waiver of inadmissibility. The waiver application was denied accordingly. The applicant, through counsel, filed a timely appeal of that decision and the AAO dismissed the applicant's appeal on March 16, 2011, also finding that the applicant was not eligible for a waiver of inadmissibility as a result of her inadmissibility under section 212(a)(2)(C) of the Act.

In his first motion, counsel asserted that the record did not contain substantial and probative evidence that the applicant was a "knowing, and conscious participant or conduit in the transfer, passage or delivery of narcotic drugs," citing *Garces v. U.S. Attorney General*, 611 F.3d 1337 (11th Cir. 2010). Counsel further stated that the applicant's plea of *nolo contendere* to possession of 20 grams or less of marijuana in violation of Florida Statutes section 893.13(6)(b) and the police reports associated with that conviction carry little or no probative weight. He stated that as a result, the applicant was not inadmissible under section 212(a)(2)(C) of the Act.

In our decision, dated August 1, 2013, we found the assertions made by counsel and the case law cited in support of his assertions unpersuasive. We again found that the record established there was reason to believe that the applicant knowingly aided, abetted, and assisted others in the illicit trafficking of a controlled substance. Specifically, there was reasonable, substantial, and probative evidence to support the belief that she "has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking" in a controlled substance. See *Alarcon-Serrano v. I.N.S.* at 1119. We found further that the applicant had provided no credible evidence to overcome the evidence supporting the finding that she is inadmissible under section 212(a)(2)(C)(i) of the Act. Thus, the applicant's motion was dismissed.

In his current motion, counsel asserts that the AAO made a legal and factual error in finding the applicant inadmissible under section 212(a)(2)(C)(i) of the Act. He again cites to *Garces*, and to *Lopez-Molina v. Ashcroft*, 368 F.3d 1206, 1209 (9th Cir. 2004), to support his assertions. He states that because the applicant resides in the 11th Circuit, *Garces* is controlling case law for her waiver application and inadmissibility. He asserts that in *Garces*, the 11th Circuit found that an alien does not have to prove that they are not subject to the reason to believe standard unless there is some other evidence, other than police reports, indicating reason to believe. Counsel also asserts that the

AAO's use of *Castano v. INS*, 956 F.2d 236 (11th Cir. 1992), to support its finding that police reports alone can be used to make a finding of "reason to believe" is in error as there is no mention of a police report in *Castano*.

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 was found to be inadmissible under section 212(a)(2)(C) of the Act, which states in pertinent part that:

(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.

As stated in our previous decision, inadmissibility under section 212(a)(2)(C) of the Act applies when the adjudicator "knows or has reason to believe" that the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled, or endeavored to do so. *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977); see also *Garces, supra*, at 1345-46; *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9th Cir. 2000). In order for the adjudicator to have sufficient "reason to believe" that an applicant has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by "reasonable, substantial, and probative evidence." *Matter of Rico*, 16 I&N Dec. at 185. A conviction or a guilty plea is not necessary to find a "reason to believe." *Castano v. INS*, 956 F.2d 236 (11th Cir. 1992); *Nunez-Payan v. INS*, 815 F.2d 384 (5th Cir. 1987); *Matter of Favela*, 16 I&N Dec. 753 (BIA 1979).

At issue is whether police reports can be considered "reasonable, substantial, and probative evidence" in establishing "reason to believe." Whether a police report constitutes "reasonable, substantial, and probative" evidence in the context of an inadmissibility finding under section 212(a)(2)(C) is a determination that is made on a case-by-case basis. Counsel contends that in accordance with *Garces*, police reports alone, without corroborating evidence cannot be the basis for a finding of inadmissibility under section 212(a)(2)(C) of the Act. We agree that in *Garces*, the 11th Circuit declined to find the applicant inadmissible section 212(a)(2)(C) of the Act based on

information in police reports. *Garces, supra*, at 1349. In *Garces*, there was very little information given in the police reports and the corroborating conviction had been vacated. *Id.* at 1344, 1349. The 11th Circuit noted that the police reports stated the police officers' conclusions rather than recording their observations of facts sufficient to show guilt. *Id.* at 1349. The Court noted that in their previous decisions and in decisions by the BIA, "reason to believe" has been upheld in cases where the alien either admitted that he or she had trafficked in drugs, or he or she was caught with a significant quantity of them. *Id.* at 1350. However, the court also stated that these examples were not given to suggest that they set a bar to be cleared in "reason to believe" cases, but simply to illuminate the weakness of the evidence against *Garces*. The Court then declined to define the minimum showing necessary to establish "reason to believe." *Id.*

Taking into consideration the *Garces* decision, we again find that the applicant is inadmissible under section 212(a)(2)(C) of the Act. The applicant's case and the evidence present herein can be distinguished from the evidence presented in *Garces*. In the applicant's case there is an extremely detailed police report recording police officer's observations of facts sufficient to show guilt and not merely conclusions by an officer. The applicant's arrest report details the findings and observations of police officers during an investigation involving seven police detectives, one police sergeant, one U.S. Postal Service Investigator, and one police officer as witnesses. The report details how over 10 pounds of marijuana was found in the home where the applicant stated she resided with her boyfriend, and a bag of marijuana, baggies and a small scale were found in her bedroom. Unlike in *Garces*, the applicant was convicted of possession of marijuana. Thus, we find that the police report and criminal record of the applicant constitutes reasonable, substantial, and probative evidence that the applicant has been an illicit trafficker in any controlled substance or has been a "knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled substance." Again, the applicant does not provide any contrary evidence to rebut the record and it is the applicant's burden of proof in these proceedings to establish that she is clearly and beyond a doubt admissible. Section 291 of the Act, 8 U.S.C. § 1361; Section 235(b)(2)(A) of the Act, 8 U.S.C. § 1225(b)(2)(A); *see also Garces, supra*, at 1345-46 (stating that "we do not require every alien seeking admission to the United States to produce evidence proving clearly and beyond a doubt that he is not a drug trafficker, unless there is already some other evidence-some 'reason to believe'-that he is one"). The applicant has provided no credible evidence to overcome the evidence supporting the finding that she is inadmissible under section 212(a)(2)(C)(i) of the Act. As the present motion does not establish that our prior decision was based on an incorrect application of law or policy, it is dismissed. *See* 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.