



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **MAR 18 2014**

Office: ANAHEIM [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) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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. 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 International Affairs Support Branch, Anaheim, California, on behalf of the Field Office Director, Ciudad Juarez, Mexico. The waiver application 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 a crime involving moral turpitude. The record indicates that the applicant has a U.S. citizen spouse, three U.S. citizen children, a U.S. citizen mother, and a lawful permanent resident father. He 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 with his family.

In a decision, dated January 2, 2013, the field office director found that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a result of an April 2001 conviction for aggravated assault with a deadly weapon. She also found that the applicant was inadmissible under section 212(a)(9)(A)(i) of the Act as a result of two removals, requiring permission to reapply for admission. The field office director noted that the applicant was no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act because he had been out of the country for over ten years. She then found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's U.S. citizen wife and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. The field office director did not address hardships to the applicant's other qualifying relatives, for which documentation was submitted. Finally, the field office director denied the applicant's Application for Permission to Reapply for Admission because granting the application would serve no purpose in light of the applicant's continuing inadmissibility.

On appeal, counsel asserts that the applicant's wife and parents will suffer extreme hardship if he is not allowed to enter the country as they all need the applicant for emotional and financial support. He states that these qualifying relatives suffer medical conditions and his parents require his full attention and support. He states that the applicant's spouse has been diagnosed with depression, anxiety, and with other medical issues.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (i) [A]ny 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 . . . is inadmissible.
- (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 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 indicates that on or around February 7, 1991, in El Paso, Texas, the applicant was

convicted, for immigration purposes, of marijuana possession, under two ounces. The applicant was sentenced to six months of probation. The applicant has, therefore, been convicted of a controlled substance violation rendering him inadmissible under section 212(a)(2)(A)(i)(II) of the Act. Section 212(h) of the Act allows for a waiver of inadmissibility only when the conviction relates to a single offense of simple possession of 30 grams or less of marijuana. The record of proceeding before the AAO contains criminal records indicating only that the applicant was convicted under a statute prohibiting possession of less than two ounces of marijuana, but the actual amount of marijuana is unspecified. We note that two ounces is approximately 56 grams and the applicant has presented no evidence that demonstrates his conviction was for possession of less than 30 grams.

In interpreting inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, and the corresponding waiver of inadmissibility under section 212(h), the BIA has held that a categorical inquiry concerning the nature and amount of a controlled substance is clearly insufficient, and Congress intended to permit a broader factual inquiry in order to resolve these issues. *Matter of Martinez Espinoza*, 25 I&N Dec. 118, 124-25 (BIA 2009). If the amount of marijuana “cannot be readily determined from the conviction record, the alien . . . 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 [marijuana]’”. *Matter of Grijalva*, 19 I&N Dec. 713, 718 (BIA 1988). Unlike a removal hearing in which the government bears the burden of establishing a respondent’s removability, the burden of proof in the present proceedings is on the applicant to establish his admissibility for admission to the United States “to the satisfaction of the Attorney General [Secretary of Homeland Security].” *See* Section 291 of the Act, 8 U.S.C. § 1361. Thus, it is the applicant’s burden to demonstrate that his conviction was for simple possession of 30 grams or less of marijuana.

We note that on January 10, 2014, we issued a notice of intent to dismiss the appeal based on the reasons stated above. We granted the applicant thirty (30) days to submit additional evidence regarding the amount of marijuana involved in his conviction. The applicant submitted no further documentation. Thus, the record fails to establish that the applicant is eligible to apply for a waiver of his inadmissibility under section 212(h) of the Act.

Likewise, an application for permission to reapply for admission is denied, in the exercise of discretion, to an applicant who is statutorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964).

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.