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

(b)(6)

Date: MAR 1 8 2014 Office: LOS ANGELES, CALIFORNIA

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and (h), respectively

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,

Michael Shumway

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. The field office director's decision was appealed to the Administrative Appeals Office (AAO) and the appeal was dismissed. A motion to reopen this appeal was dismissed. The matter is now before the AAO again on motion. The motion will be dismissed.

The applicant is a native and citizen of Mexico who was found inadmissible under section 212(a)(2)(C) of Act, 8 U.S.C. § 1182(a)(2)(C), for being a controlled substance trafficker or a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking of a controlled substance. In his decision, dated June 5, 2009, the field office director noted that there is no waiver available for inadmissibility under section 212(a)(2)(C) of the Act and denied the applicant's waiver application accordingly.

On appeal, counsel contended that the field office director's decision to find the applicant inadmissible under section 212(a)(2)(C) of Act was based on the applicant's arrests in 1992 and 1998 for suspicion of possession for sales of controlled substances and that the police reports and public property records involved in the arrest failed to specify the exact nature of the applicant's offense. Citing *Alarcon-Serrano v. INS*, 220 F.3d 116 (9th Cir. 2000), counsel declared that the field office director's finding of inadmissibility under section 212(a)(2)(C) of Act was not based on reasonable, substantial, or probative evidence, noting that the district attorney did not bring charges against the applicant due to lack of evidence. Counsel maintained that the field office director's finding of inadmissibility under section 212(a)(2)(C) of Act was not reasonable in that it was contrary to the facts and not based on substantial evidence because the facts in the case exonerate the applicant. Counsel also cited to *Pronsivakulchai v. Gonzales*, 461 F.3d 903 (7th Cir. 2006), and contended that the applicant's right to procedural due process was violated because the applicant was not provided with an opportunity to rebut or present evidence in his defense in regard to the police records and prior to denying the waiver application. Counsel stated that the applicant attempted to obtain copies of the records for the 1992 and 1998 arrests and was informed that they were destroyed and therefore not available.

In our decision, dated February 21, 2012, we found there was "reasonable, substantial, and probative evidence" to believe that the applicant was an illicit trafficker or a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking of a controlled substance. We based this finding on the applicant's two arrests in 1992 and 1998 for possession of marijuana for sale; on the events described in the 1998 arrest report conveying that the applicant's sons (one of whom no longer lived with the applicant) sold marijuana from [redacted], which is the location where the applicant lived; that the applicant was found with a large sum of cash shortly after the arrests of his sons and others in 1998; and that one of the sons was convicted of selling marijuana in 1992 and in 1998.

We also noted that counsel's assertions regarding the applicant's right to procedural due process was remedied by the appeal process itself. The petitioner had an opportunity on appeal to rebut the finding of inadmissibility under section 212(a)(2)(C) of Act.

In his first motion, dated March 19, 2012, counsel stated no reason for the motion, indicating that a brief and/or additional evidence would be filed within 30 days. This documentation was never received and the motion was dismissed.

In his current motion, dated September 5, 2013, counsel submits evidence of a brief and Form G-28 being filed with the AAO in connection with the applicant's initial motion. Counsel states, in her current brief and in the brief that was previously submitted on motion, that the applicant is not inadmissible to the United States and that there is no evidence that the applicant is inadmissible under section 212(a)(2)(C) of Act. Counsel states further that official documents from the State of California were not given the correct consideration in the applicant's case. Counsel asserts that the AAO erred factual and legally in its findings.

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 Service 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).

Section 212(a)(2)(C)of the Act provides that:

> (C) Controlled Substance Traffickers - Any alien who the consular officer or the Attorney General knows or has reason to believe--
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> > (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.

We note that the question regarding the final disposition of the applicant's arrests is not determinative in this case. 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).

Counsel states and the record indicates that the finding of inadmissibility under section 212(a)(2)(C) of the Act has been largely based on the arrest report describing the police investigation and arrest of

the applicant on April 8, 1998. 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. Although not binding in the current decision, the 11th Circuit decision *Garces v. U.S. Attorney General*, 611 F.3d 1337 (11th Cir. 2010) is helpful in illustrating the factors that are to be considered when using an arrest report to make a finding of inadmissibility under section 212(a)(2)(C) of the Act. 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 careful consideration the arrest report in the applicant's case, we affirm the finding that the applicant is inadmissible under section 212(a)(2)(C) of the Act. In the applicant's case there is an extremely detailed arrest report recording police detectives' observations of facts sufficient to show guilt and not merely conclusions by an officer. The details of the report were extensively covered in our prior decision. The applicant's 1998 arrest report contains the findings and observations of police detectives during an investigation at the applicant's residence. The report details how large quantities of marijuana were being picked up and delivered from the applicant's residence in exchange for large sums of money. In addition, in connection with this investigation the applicant's son was convicted of selling marijuana from the applicant's residence. Thus, we find that the 1998 arrest report for the applicant constitutes reasonable, substantial, and probative evidence that the applicant 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 he 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 he is inadmissible under section 212(a)(2)(C) 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.