



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: NOV 21 2014

OFFICE: PHILADELPHIA

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:

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,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Philadelphia, Pennsylvania denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed a crime relating to a controlled substance. The applicant 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 U.S. citizen spouse and child.

The Field Office Director determined that the applicant is not eligible to apply for a 212(h) waiver and denied the applicant's waiver application accordingly. *See Decision of the Field Office Director*, dated June 11, 2014.

On appeal, counsel for the applicant asserts that the applicant is eligible to apply for a 212(h) waiver because her rights were violated during her criminal proceedings. Counsel further asserts that, as there is no record available for one of the applicant's criminal charges, it should not be considered. Counsel contends that the applicant's U.S. citizen spouse would experience extreme hardship upon the denial of her waiver application.

In support of the waiver application and appeal, the applicant submitted a letter, an opinion from her criminal defense attorney, letters from the applicant's spouse, e-mails concerning the applicant's criminal case, criminal records, medical letters for the applicant, employment documents for the applicant's spouse, letters of support, a medical document concerning the applicant's spouse's father, identity documents, financial documents and background information concerning teaching. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(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

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

(h) The Attorney General [Secretary of Homeland Security] 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 if –

(1) (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 . . . .

The record reflects that the applicant, on June [REDACTED] was convicted in [REDACTED] District Court of the inhalation and import of marijuana, each offense taking place on a separate date. The applicant was sentenced for a term of two years and six months, in addition to the four days served by the applicant prior to the judgment. The enforcement of the applicant's sentence was to be postponed for three years from the date of judgment.

Counsel for the applicant asserts that the applicant's rights were violated during her criminal proceedings in South Korea, including a failure to provide Miranda warnings and counsel. Counsel also asserts that the aggressiveness of the investigators on the applicant's case did not allow for the determination of the applicant's intent and awareness in her import crime. Counsel contends that the applicant was not involved in smuggling contraband or aware of the contents of the package leading to her import charge. Counsel further contends that there are no records pertaining to the applicant's inhalation charge so that this charge should not be considered in determining her inadmissibility.<sup>1</sup>

The applicant submitted an opinion from her criminal defense attorney asserting that the prosecutors in the applicant's case violated legal processes.<sup>2</sup> The applicant's criminal defense attorney contends that the applicant's Miranda rights and right to counsel were violated, rendering her import arrest unlawful. The applicant submitted e-mail correspondence dated February [REDACTED] indicating that a judge ruled that the applicant's arrest was unlawful and her rights violated. It is noted that the record does not contain any court documents supporting the applicant's assertions regarding the violation of her legal rights. Further, the record includes a criminal judgment against the applicant, dated June [REDACTED], and there is also no indication that this judgment has been overturned.

The applicant's criminal judgment finds facts supporting her conviction for the import and inhalation of marijuana. It is noted that the conviction document postdates any prior rulings referenced in the applicant's submitted supporting documentation. The Board of Immigration Appeals, in *Matter of Max Alejandro Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996), held that collateral attacks on a conviction do not operate to negate the finality of the conviction unless and until the conviction is overturned.

---

<sup>1</sup> The judgment of conviction against the applicant plainly states that she, on December [REDACTED] inhaled marijuana, and finds the applicant guilty of this charge on June [REDACTED]. As such, the record contains sufficient evidence to determine that the applicant was convicted for marijuana inhalation.

<sup>2</sup> It is noted that this opinion refers to attached evidentiary documentation that was not submitted in the record.

It is clear from section 212(a)(2)(A)(i)(II) and 212(h) of the Act that possession of marijuana is a crime of inadmissibility for which an applicant may, or may not, be eligible for a waiver. The applicant has the burden of demonstrating that her marijuana conviction is within the scope of the Act's ameliorative provisions. *Matter of Grijalva*, 19 I&N Dec. 713, 718 n. 7 (BIA 1988). The applicant's record of conviction establishes her convictions for the import and inhalation of marijuana. As such, the applicant has not fulfilled her burden of demonstrating that she was convicted of only the possession of marijuana, in a quantity of marijuana for which she would be eligible for a waiver. Accordingly, the applicant has failed to demonstrate that she is not inadmissible to the United States or that she is eligible for a waiver of inadmissibility.

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.