



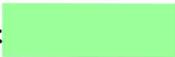
U.S. Citizenship
and Immigration
Services

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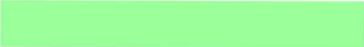


DATE: **OCT 27 2014**

Office: KENDALL FIELD OFFICE

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Kendall Field Office Director, Miami, Florida, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Cuba who became a lawful permanent resident on June 18, 1996, through the Cuban Adjustment Act. The applicant was later convicted of Conspiracy to Possess with Intent to Distribute 1,000 or More Marijuana Plants and subsequently issued an order of removal by an immigration judge in 2007. The applicant submitted an Application of Waiver of Grounds of Inadmissibility (Form I-601) pursuant to section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), to waive 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 crimes involving a controlled substance.¹

The field office director found that the applicant is ineligible for a section 212(h) waiver of inadmissibility because he is neither an arriving alien seeking to waive a ground of inadmissibility nor an alien seeking to waive a ground of inadmissibility in conjunction with an Application to Adjust Status (Form I-485). The field office director further concluded that the applicant is statutorily ineligible for a waiver under section 212(h) because it waives the application of section 212(a)(2)(A)(i)(II) only as it relates to “a single offense of simple possession of 30 grams or less of marijuana.” See *Decision of the Field Office Director*, dated August 27, 2013.

On appeal the applicant describes the emotional and financial hardship he would experience if he were removed from the United States to Cuba.

A Form I-601 waiver application is viable when there is a pending Application to Adjust Status (Form I-485) or an immigrant visa application. Because the applicant does not have an underlying Form I-485 adjustment application to support the filing of a Form I-601 waiver application, no purpose would be served in discussing whether the applicant is eligible for a waiver under 212(h), the hardship to a qualifying family member, and whether the applicant merits a waiver as a matter of discretion.

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.

¹ The record shows that on March [REDACTED], the applicant was convicted in [REDACTED] of Florida for Conspiracy to Possess with Intent to Distribute 1,000 or more Marijuana Plants, in violation of 21 U.S.C. § 846. The applicant was sentenced to 37 months imprisonment.