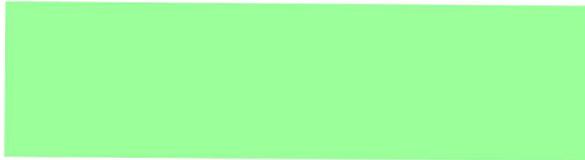
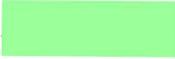


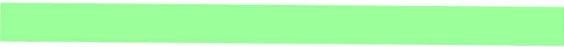


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **SEP 29 2014** Office: NEBRASKA SERVICE CENTER FILE: 

IN RE: Applicant: 

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:

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 waiver application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Venezuela who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime relating to a controlled substance. He seeks a waiver of inadmissibility in order to reside in the United States.

The Director found that the applicant was not eligible for a waiver, as his inadmissibility was not related to a single offense for simple possession of 30 grams or less of marijuana, and the Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly. *Decision of the Director*, dated February 3, 2014.

On appeal, the applicant asserts that he should not have been convicted for a cocaine offense or conspiracy to distribute Quaaludes, because he did not commit either crime; a false accusation was made against him; he was the victim of ineffective assistance of counsel during his criminal trial; and he cooperated with the Drug Enforcement Agency (DEA) to capture the person responsible for the crime. *Applicant's Statement Accompanying Form I-290B, Notice of Appeal or Motion*, dated February 24, 2014.

The record contains, but is not limited to, statements from the applicant and his daughter, and the applicant's criminal records. The entire record was reviewed and considered in rendering this decision.

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

Criminal and related grounds. —

(A) Conviction of certain crimes. —

(i) In general. — Except as provided in clause (ii), any 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.

The record reflects that on May 28, 1992 the United States District Court, Southern District of New York, convicted the applicant of conspiracy to distribute cocaine under 21 U.S.C. § 846. The

applicant's offense of conspiracy to distribute cocaine is a conviction relating to a controlled substance, rendering him inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

The applicant asserts that he should not have been convicted for a cocaine offense, because he did not commit the crime; a false accusation was made against him; he was the victim of ineffective assistance of counsel in the related criminal proceedings; and he cooperated with the DEA to capture the person responsible for the crime. The record, however, does not include evidence that his conviction was vacated for any of the reasons he mentions, including ineffective assistance of counsel. Although he explains that the DEA appreciated his cooperation, the record does not include objective evidence corroborating his claim that he worked with the DEA, and such evidence nonetheless would not affect the finding of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act.

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

The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or 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

The applicant's conviction does not relate to possession of 30 grams or less of marijuana. Therefore his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act cannot be waived under section 212(h) of the Act. Moreover, as the applicant is statutorily ineligible for a waiver, we will not address whether his convictions for battery and defrauding an innkeeper are crimes involving moral turpitude, which would also render him inadmissible under section 212(a)(2)(A)(i)(II) of the Act, and whether he willfully misrepresented a material fact when he applied for a nonimmigrant visa on September 15, 1981, which would render him inadmissible under section 212(a)(6)(C) of the Act.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.