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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **APR 08 2015**

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [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:

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
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the waiver application. 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 the Dominican Republic who was found to be inadmissible under 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 crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act in order to return to the United States to reside with his U.S. citizen mother and children.

The director determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude and found he was statutorily ineligible for a waiver under section 212(h) of the Act because he was convicted of an aggravated felony after admission to the United States as a lawful permanent resident. The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director* dated June 30, 2014.

On appeal the applicant requests the opportunity to return to the United States to be with his family. With the appeal the applicant submits a statement. The record contains an affidavit from the applicant's mother, medical documentation for the applicant's mother, education and training documents for the applicant, letters of support for the applicant, and evidence pertaining to the applicant's convictions. 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:

(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-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
- (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:

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 if -

(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. . . . 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. . . .

No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than seven years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

On July 22, 1980, the applicant was admitted to the United States as a lawful permanent resident. On September 25, 1989, the applicant was convicted in the [redacted] Texas, for the offense of Attempted Capital Murder of a Peace Officer for events that had occurred on [redacted]. The applicant was sentenced to confinement in the Texas Department of Corrections for a period of 12 years. Also on September 25, 1989, the applicant was convicted in the [redacted] Texas, for Unlawfully, Intentionally and Knowingly Possessing a Controlled Substance (Cocaine), in violation of the Texas Controlled Substance Act. The applicant was sentenced to 12 years confinement to run concurrently with the sentence for his other conviction. On July 15, 1996, an immigration judge found the applicant deportable from the United States, but granted relief from deportation pursuant to section 212(c) of the Act. The then-U.S. Immigration and Naturalization Service appealed the grant of relief, and on April 11, 1997, the Board of Immigration

Appeals ordered the applicant deported to the Dominican Republic. The applicant was removed from the United States on August 14, 1998.

On appeal, the applicant does not dispute that he is inadmissible for having been convicted of crimes involving moral turpitude.

The applicant is statutorily ineligible for a waiver as his conviction for attempted capital murder of a peace officer constitutes an aggravated felony under section 101(a)(43) of the Act, which states in pertinent part:

(43) The term "aggravated felony" means-

(A) murder, rape, or sexual abuse of a minor

(U) an attempt or conspiracy to commit an offense described in this paragraph.

As noted above, the applicant was also convicted for possessing a controlled substance, namely cocaine, and sentenced to 12 years confinement. He is also ineligible for a waiver under section 212(h) of the Act because his conviction for violating a law relating to a controlled substance did not relate to a single offense of simple possession of 30 grams or less of marijuana.

The record establishes that the applicant was convicted of an aggravated felony under section 101(a)(43) of the Act, and this conviction occurred after the applicant's admission to the United States as a lawful permanent resident. He was also convicted of an offense relating to a controlled substance for which no waiver is available. Consequently, the applicant is permanently ineligible for a waiver under section 212(h) 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.

ORDER: The appeal is dismissed.