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U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: **APR 14 2015**

Office: LOS ANGELES

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:

[Redacted]

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,  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Los Angeles denied the Application for Waiver of Grounds of Inadmissibility (I-601) 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 Mexico who was found to be inadmissible under 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 violated a law relating to a controlled substance. The applicant was also found inadmissible under section 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i), for having been an illicit trafficker of a controlled substance. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse. The applicant was deported from the United States in 1968 and is also inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). In regard to that ground of inadmissibility, the applicant has concurrently filed an Application for Permission to Reapply for Admission (Form I-212), which is the subject of a separate appeal.

On May 22, 2014, the Field Office Director denied the Form I-601 Application for Waiver of Grounds of Inadmissibility, concluding that as a result of the denial of the applicant's Form I-485 application, the applicant was not eligible to file an application for a waiver.

On appeal, the applicant states that he is eligible for adjustment of status because he was admitted after inspection as a legalization applicant. The applicant also states that his conviction under 21 U.S.C. § 176(a) "does not categorically constitute a controlled substance offense."

In support of the waiver application, the record includes, but is not limited to: biographical information for the applicant and his spouse; employment information for the applicant and his spouse; and documentation of the applicant's criminal and immigration history.

We will first address the applicant's admissibility and eligibility for a waiver. The applicant was found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a crime involving a controlled substance and under section 212(a)(2)(C)(i) of the Act for having been an illicit trafficker of a controlled substance.

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-

...

(II) a violation of (or 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(a)(2)(C) of the Act provides, in pertinent part, that:

Any alien who the consular officer or the Attorney General [now Secretary of the Department of Homeland Security (Secretary)] knows or has reason to believe

- (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.

The applicant's criminal record indicates that on [REDACTED] before the United States District Court for the Southern District of California, he was found guilty of "smuggling marihuana, in violation of U.S.C. Title 21, Section 176(a)." The applicant was sentenced to five years imprisonment, pursuant to 18 U.S.C §4208(a)(2).

The applicant's attorney states that the section of law under which the applicant was convicted "does not categorically constitute a controlled substance offense because the statute applies to any goods brought into the United States" regardless of their nature. The applicant's attorney also states that because the applicant's conviction occurred in 1968, and "prior to the enactment of the Immigration Act of 1990" that the applicant is eligible for a waiver of inadmissibility.

The section of law under which the applicant was convicted, 21 U.S.C. §176(a), is now repealed, however, the historical and statutory notes indicate the section 176(a) "covered the illegal importation and smuggling of marihuana, set penalties for such illegal importation and smuggling, made unexplained possession of marijuana sufficient evidence for such conviction, and defined 'marihuana.'" 21 U.S.C.A. §176 (Historical and Statutory Notes). There is no documentation in the record indicating that this section of the law does not qualify as a conviction for a controlled substance violation under section 212(a)(2)(A)(i)(II), which is retroactive. Additionally, section 212(a)(2)(C) of the Act only requires that there be a "reason to believe" the applicant has been an illicit trafficker in any controlled substance or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such defined controlled substance. The applicant's conviction record indicates that he was found guilty of "smuggling marihuana." Furthermore, the criminal complaint associated with the applicant's conviction indicates that the applicant "knowingly smuggled and clandestinely introduced, without declaration and invoicing, approximately 60 pounds of marijuana into the United States from Mexico." This information, taken together, is sufficient to find that there is reason to believe that the applicant has been an illicit trafficker in a controlled substance as set forth in 212(a)(2)(C) of the Act.

As result of the applicant's conviction, he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of an offense relating to a controlled substance and under section 212(a)(2)(C) of the Act, for having been an illicit trafficker in any controlled substance.

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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) (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; or

....

(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.

In order to be eligible for consideration for a waiver under section 212(h) of the Act, the applicant must establish that his conviction relates to simple possession of 30 grams or less of marijuana. The applicant's conviction does not meet the requirement of being a single offense of simple possession of 30 grams or less of marijuana. The applicant is statutorily ineligible to apply for a waiver of section 212(a)(2)(A)(i)(II) of the Act. Additionally, there is no waiver of inadmissibility available for the applicant's inadmissibility under section 212(a)(2)(C)(i) 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.