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



U.S. Citizenship
and Immigration
Services



Date: **APR 27 2015**

Office: BOSTON, MA

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:



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 waiver application was denied by the Field Office Director, Boston, Massachusetts. 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 United Kingdom 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 been convicted of violating two laws of a foreign country relating to a controlled substance. The applicant is the spouse of a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. §1182(h) to reside in the United States with his U.S. citizen spouse and two children.

In a decision dated June 4, 2014, the Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on the basis that the applicant was ineligible for a section 212(h) waiver because the record indicated that the applicant had been convicted on two occasions of violating a law related to a controlled substance. The field office director stated that the record was clear that the applicant was convicted of possession of 30 grams or less of marijuana. However, the record established that the applicant had a second arrest for possession of a Class B Controlled Substance and the record was not clear as to how this arrest was resolved. As it was the applicant's burden to prove his admissibility, the waiver application was denied.

On appeal, counsel states that he is submitting a letter from the court where the applicant's criminal record would be maintained, stating that the records for the arrest in question no longer exist. Counsel states that because it is impossible for the applicant to show how this arrest was resolved, it cannot be conclusively proven that the applicant was convicted of the offense. Thus, counsel asserts, the applicant has only been convicted of one count of possession of 30 grams or less of marijuana.

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

- (1) 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 —
 - (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 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, 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* (emphasis added.)

A police certificate dated April 3, 2013, listing any convictions and reprimands, warnings, cautions, or impending prosecutions in the applicant's record, states that the applicant was arrested on July 24, 1994 for possessing a class B controlled drug and on December 5, 1994, he was fined 100 British pounds by the [REDACTED] Court. On May 17, 1995, the applicant was arrested for possessing a class B controlled drug and on March 28, 1996, he was fined 150 British pounds by the [REDACTED] Court for the offense.

Court records establish that on March 28, 1996, the applicant pled guilty to the offense of possessing cannabis resin in violation of the Misuse of Drugs Act of 1971, section 5(2). The applicant submits documentation from the [REDACTED] Court stating that his 1994 court records were no longer available.

The Misuse of Drugs Act of 1971, states, in pertinent part:

Restriction of possession of controlled drugs.

- (1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.
- (2) Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1) above.

In regards to the applicant's March 28, 1996 conviction, the record does not show that he was in possession of the equivalent of 30 grams or less of marijuana. The Misuse of Drugs Act of 1971 and the court records do not indicate the amount of cannabis resin the applicant had in his possession. It should be noted that according to the Sentencing Guidelines at 18 U.S.C. App. 4 § 2D1.1, one gram of cannabis resin would be the equivalent of 5 grams of marijuana. Thus, we cannot find that the applicant's conviction in 1996 for possession of cannabis resin was for possessing the equivalent of 30 grams or less of marijuana. Thus, the applicant is statutorily ineligible to be considered for a section 212(h) waiver.

In regards to the applicant's 1994 court proceedings, we acknowledge the letter from the [REDACTED] Court stating that the record is unavailable. However, the documents that are available, the police certificate and other conviction records, indicate that the applicant was convicted in 1994. The disposal record on the police certificate is identical in format to the records where they applicant was convicted. In addition, the applicant was punished for his arrest in 1994 with a fine. If the applicant's case in 1994 was dismissed, the applicant has not provided an explanation as to why he was fined and why the dismissal by the court was not recorded on the police certificate. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, the Act makes clear that a foreign national must establish admissibility "clearly and beyond doubt." See section 235(b)(2)(A) of the Act. See also 240(c)(2)(A) of the Act. The same is true for admissibility in the context of an application for adjustment of status. See *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008). See *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008). See *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008).

The applicant has not established that he was convicted of a single offense of simple possession of 30 grams or less of marijuana. He is, therefore, statutorily ineligible for a waiver under section 212(h) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his U.S. citizen wife or whether he merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.