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



U.S. Citizenship  
and Immigration  
Services

DATE: **AUG 06 2015**

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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 Acting District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Trinidad 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. The applicant's spouse and three children are U.S. citizens. 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.

The Acting District Director found that the applicant is not eligible for a waiver under section 212(h) of the Act, as his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act is not related to a single offense for simple possession of 30 grams or less of marijuana; and she denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.<sup>1</sup> *Decision of the Acting District Director*, dated February 18, 2014.

On appeal the applicant, through counsel, asserts that the Acting District Director did not meet her burden to establish that the applicant's conviction was for more than 30 grams of marijuana; and, consistent with Congressional intent, the applicant is eligible for a section 212(h) waiver even if the applicant's conviction was for more than 30 grams. *Brief in Support of Form I-290B, Notice of Appeal or Motion*, dated April 14, 2013.<sup>2</sup>

The record contains, but is not limited to, counsel's brief, documents to establish relationships and identity, statements from the applicant's spouse, a psychiatrist's letter, medical records, financial records, and 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 —

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<sup>1</sup> The denial decision refers to the applicant having been convicted of a crime involving moral turpitude, which appears to be a misstatement; it includes, however, the correct statutory reference concerning the applicant's inadmissibility for his controlled-substance violation.

<sup>2</sup> We received the instant appeal on January 5, 2015.

- (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 [REDACTED] 1996, the applicant was convicted of criminal possession of marihuana in the second degree under New York Penal Law § 221.25, and he was sentenced on [REDACTED] 1996, to five years of probation, a six-month suspended license and a \$155 fine. Therefore, he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violating a law related to a controlled substance.

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

The Attorney General [now Secretary of the Department of Homeland Security] 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 . . . .

New York Penal Law § 221.25, as in effect at the time of the applicant's conviction, states in pertinent part:

A person is guilty of criminal possession of marihuana in the second degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than sixteen ounces.

The statute which the applicant was convicted under requires possession of one or more preparations, compounds, mixtures or substances containing marihuana with a weight of more than 16 ounces, which is 453.59 grams. In addition to the documents reflecting his conviction under this statute, the record includes a transcript of proceedings in the Supreme Court of New York, [REDACTED] dated [REDACTED] 1996, showing that the applicant responded yes to the question, "Were you in possession of marijuana that weighed more than 16 ounces?" The record therefore clearly establishes that the applicant's conviction was for more than 30 grams of marijuana.

The applicant, through counsel, cites to *Medina v. Ashcroft*, 393 F.3d 1063 (9th Cir. 2005), *Flores-Arellano v. INS*, 5 F.3d 360 (9th Cir. 1993) and *Matter of Martinez-Espinoza*, 25 I&N Dec. 118 (BIA 2009) to support his assertion that he is eligible for a section 212(h) waiver even if his conviction was for more than 30 grams of marijuana. The first case involves a conviction for the use of THC-carboxylic acid, which the court interpreted in that case as a small amount of marijuana for personal use. *Medina v. Ashcroft*, at 1065-1067. The second case involves the deportability of individuals convicted of being under the influence of a controlled substance other than marijuana. *Flores-Arellano v. INS*, at 363. The third case involves the availability of a waiver under section 212(h) of



the Act for a drug paraphernalia offense that “relates to a single offense of simple possession of 30 grams or less of marijuana.” *Matter of Martinez-Espinoza*, at 119. In none of these cases has a court found that an individual is eligible for a section 212(h) waiver when the individual is convicted of possession of more than 30 grams of marijuana. As such, the applicant's claim that he is eligible for a section 212(h) waiver even if his conviction was for more than 30 grams of marijuana lacks merit. Moreover, the applicant provides no other legal support for his assertion that Congress intended this waiver to be available to individuals convicted of possessing over 30 grams of marijuana.

The applicant was not convicted of a single offense of simple 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. As such, the evidence of hardship presented will not be addressed.

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.