U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-S-J-

DATE: DEC. 22, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

The Applicant, a native and citizen of the Bahamas, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Nebraska Service Center Director denied the application. The Applicant appealed that decision and we dismissed the appeal. The matter is now before us on a motion to reopen and reconsider. The motion will be denied.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance.

The Director determined that the Applicant's 1991 conviction for attempted possession of cocaine and his 1993 conviction for attempted purchase of cocaine render him inadmissible under section 212(a)(2)(A)(i)(II) of the Act, with no waiver available, and he denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant asserted that his conviction for an attempted possession of a controlled substance was not a violation of a law relating to a controlled substance. He did not submit any authority for this assertion.

We dismissed the appeal, finding that because the Applicant was statutorily ineligible for relief under section 212(a)(2)(A)(i)(II) of the Act, no purpose would be served in discussing whether he has demonstrated rehabilitation, whether he has established extreme hardship to a qualifying relative, or whether he merits a waiver as a matter of discretion.

On the Form I-290B, Notice of Appeal or Motion, accompanying the instant motion, the Applicant indicates that he was attaching a brief or additional evidence. However, the motion does not include a brief or additional evidence, and the Applicant provides no reason for his motion, as required in part 4 of Form I-290B.

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to

establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The requirements of a motion to reopen and reconsider have not been met. The motion will be denied.

The record includes, but is not limited to: a brief; documentation of criminal proceedings; declarations from the applicant's wife, son, mother, church members, and sister; a psychological evaluation and medical records. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the Applicant was convicted of attempted possession of cocaine, in violation of Florida Statutes § 893.13, on 1991 in Court. The Applicant was sentenced to one year of probation. The Applicant also was convicted of attempted purchase of cocaine, in violation of Florida Statutes § 893.13, on 1993 in Court and was sentenced to one year of probation.

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-
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> ...
>
> > (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 a waiver for a 212(a)(2)(A)(i)(II) inadmissibility only where an applicant has been convicted of a single offense of simple possession of 30 grams or less of marijuana. The plain language of Section 212(a)(2)(A)(i)(II) specifically includes "attempt to violate" any law relating to controlled substance. This provision of law, therefore, is not limited to actual possession. The Applicant in the present case has two controlled substance convictions involving cocaine, not marijuana. These convictions render him inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of offenses involving a controlled substance. Accordingly, no waiver is available to him under the Act.

In application proceedings, the burden of proving eligibility remains entirely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of R-S-J-*, ID# 14892 (AAO Dec. 22, 2015)