



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-R-M-

DATE: DEC. 23, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Peru, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Director, Newark Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having a conviction for a crime involving moral turpitude. The Applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen parents and children.

In a July 18, 2014, decision, the Director determined that the Applicant did not demonstrate extreme hardship to a qualifying relative and denied his waiver application accordingly. On appeal, the Applicant asserts that his convictions for criminal mischief and theft of moveable property are not crimes involving moral turpitude. As such, the Applicant contends that he is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act and does not require an inadmissibility waiver. In the alternative, the Applicant asserts that his qualifying relatives, including his parents and children, would experience hardship upon the denial of his waiver application.

We issued a notice of intent to deny on April 7, 2015, finding the Applicant also inadmissible under section 212(a)(2)(A)(i)(II) of the Act. In response to the notice, the Applicant asserts that there was no adjudication of guilt following his arrest for marijuana possession, and the case was dismissed. The Applicant further asserts that his conviction for theft of moveable property does not constitute a crime involving moral turpitude.

In support of the waiver application and appeal, the Applicant submitted flight information, financial documentation, documents and affidavits concerning his criminal history, medical documentation, letters of support, evidence of employment, letters from the applicant and his family members, and family photographs and cards. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(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:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) 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) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . .

The record reflects that the Applicant, on [REDACTED] pled guilty to under 50 grams of marijuana possession under section 2C:35-10A(4) of the New Jersey Code of Criminal Justice. The Applicant received a conditional discharge, he was placed in a diversion program for 365 days, and he was sentenced to fines and costs. The record reflects that the charge was subsequently dismissed pursuant to the conditional discharge on [REDACTED]

Section 101(a)(48) of the Act provides:

(A) The term “conviction” means . . . a formal judgment of guilt . . . entered by a court or, if adjudication of guilt has been withheld, where—

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

Where an applicant pleads guilty or nolo contendere, or is found guilty, but entry of the judgment is deferred by the court to allow for a period of probation and/or completion of a diversion program,

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the alien has been convicted for immigration purposes even if the charges are later dismissed. See *Matter of Marroquin-Garcia*, 23 I&N Dec. 705, 714-15 (A.G. 2005); *Matter of Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999).

By contrast, an applicant has *not* been convicted for immigration purposes where the criminal charges were dismissed following successful completion of a pretrial diversion program which occurred prior to any pleading or finding of guilt. *Matter of Grullon*, 20 I&N Dec. 12, 14-15 (BIA 1989) (citing *Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988)). For there to be no conviction in such a case, the applicant must not have entered a plea of guilty or nolo contendere and there must have been no adjudication of guilt or imposition of punishment or restraint by a court.

The charge disposition inquiry submitted by the Applicant, dated January 21, 2014, indicates that the Applicant pled guilty to under 50 grams of marijuana possession on [REDACTED]. As such, the Applicant has a conviction for violating section 2C:35-10A(4) of the New Jersey Code of Criminal Justice, and is inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

It is clear from section 212(a)(2)(A)(i)(II) and 212(h) of the Act that possession of marijuana is a crime of inadmissibility for which an applicant may, or may not, be eligible for a waiver. The Applicant has the burden of demonstrating that his marijuana conviction is within the scope of the Act's ameliorative provisions. *Matter of Grijalva*, 19 I&N Dec. 713, 718 n. 7 (BIA 1988). The Applicant's record of conviction establishes his conviction for under 50 grams of marijuana possession. The Applicant and his mother both submitted affidavits asserting that the Applicant attempted to obtain further information from the court and police department regarding the quantity of marijuana in his possession on [REDACTED] but was unsuccessful. The Applicant has not fulfilled his burden of demonstrating that he was convicted of possession of marijuana in a quantity for which he would be eligible for a waiver under section 212(h) of the Act.

As the Applicant has not demonstrated his eligibility for a waiver based on his violation of a law relating to a controlled substance under section 212(a)(2)(A)(i)(II) of the Act, we will not address his inadmissibility under section 212(a)(2)(A)(i)(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.

ORDER: The appeal is dismissed.

Cite as *Matter of C-R-M-*, ID# 12267 (AAO Dec. 23, 2015)