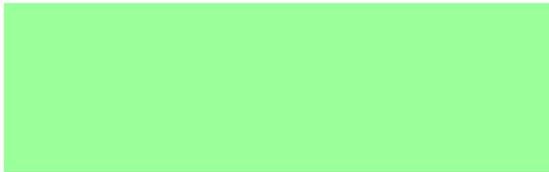


(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: FEB 02 2015 OFFICE: NEBRASKA SERVICE CENTER 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:

SELF-REPRESENTED

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Panama 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 involving a controlled substance. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The director concluded that the applicant's controlled substance violation subjects him to grounds of inadmissibility for which no waiver is available because his offense is not related to simple possession of 30 grams or less of marijuana and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated June 5, 2014.

On appeal the applicant's spouse asserts that the director erred in concluding that the applicant spent 20 months in prison as his sentence was suspended and he served only two months. The record contains some statements from the applicant and his spouse and conviction documents. The entire record was reviewed and considered in rendering this decision on the appeal.

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 —

....
(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 “[t]he 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 . . .”.

The record shows that the applicant was convicted for Illicit Drug Possession by the 1st Court of the Circuit of [REDACTED] and sentenced to fines and

20 months in prison, conditionally suspended for two years. Based upon the foregoing, the director determined that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The applicant does not deny the conviction, but states that in 1996 he was detained about two months for possession of cocaine with the sentence suspended for fines and that he has no current crimes of violations. On Form I-601 the applicant notes that more than 18 years have passed since the event that made him inadmissible and that he has been a law abiding citizen. The applicant's spouse also states that the applicant served only two months, that he has not had a conviction since [REDACTED] and that he has turned his life around.

Here we concur that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of crimes relating to a controlled substance. While the applicant has only one controlled substance-related conviction, it does not relate to a single offense of simple possession of 30 grams or less of marijuana. Because the applicant is statutorily ineligible for relief under the provisions described, 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.

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 been met.

ORDER: The appeal is dismissed.