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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: FEB 19 2015

OFFICE: [Redacted]

FILE: [Redacted]

IN RE: [Redacted]

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:

[Redacted]

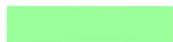
INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office



DISCUSSION: The Field Office Director, [REDACTED] Kentucky denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 committed a crime relating to a controlled substance. The applicant 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 with his family.

The Field Office Director determined that the applicant is not eligible to apply for a 212(h) waiver and denied the applicant's waiver application accordingly. *Decision of the Field Office Director*, dated September 8, 2014.

On appeal, counsel for the applicant asserts that the applicant is eligible to apply for a 212(h) waiver as the applicant was convicted for possession of marijuana. Counsel indicates that the Ninth Circuit Court of Appeals, in *Hamid v. INS*, 538 F.2d 1389 (9th Cir. 1976), equates marijuana and hashish. The applicant contends that he believed hashish to be synonymous with marijuana when he admitted to possession of hashish, and his conviction was for possession of a single marijuana cigarette.

In support of the waiver application and appeal, the applicant submitted affidavits and criminal records pertaining to the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

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 subparagraph (A)(i)(I), (B), . . . 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) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-
 - (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such

subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status.

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 February 3, 1982, in [REDACTED] was convicted of unlawful possession of a narcotic, in violation of section 3(1) of the Narcotic Control Act. The applicant was sentenced to a fine of 150 dollars or 21 days incarceration.

The applicant submitted criminal documents associated with his conviction and an arrest document indicates that the applicant was found in possession of two grams of hashish, a cannabis derivative. The record contains an affidavit from the applicant asserting that he assumed responsibility for possession of a single hashish cigarette on January 8, 1982.

A section 212(h) waiver applies to controlled substance violations related to a single offense of possession of 30 grams or less of marijuana. The United States Sentencing Guidelines indicate that the drug equivalency of one gram of hashish is five grams of marijuana. *See United States Sentencing Commission 2012 Guidelines Manual, Drug Quantity Table.* Accordingly, the applicant was convicted of possession of the equivalent of ten grams of marijuana. As such, the applicant is eligible for consideration for a waiver under 212(h) of the Act. As the activities relating to this violation took place on January 8, 1982, over fifteen years ago, the applicant is eligible for a waiver under section 212(h)(1)(A) of the Act.

The record reflects that the applicant's criminal violation took place on January 8, 1982, over thirty years ago. The applicant asserts that he has not engaged in any infractions of any laws since that date. The applicant asserts that he is gainfully employed and has been residing in the United States for seven years. The record indicates that the applicant has been employed as a systems analyst at the same company throughout his residence in the United States. The applicant asserts that he and his family, including five children, are community-minded and volunteer in community projects. The applicant submitted a letter expressing regret for his actions that led to his arrest in 1982. Based on the record, we find that the applicant has demonstrated rehabilitation and that his admission to the United States would not be contrary to the national welfare, safety, or security of the United States pursuant to section 212(h)(1)(A) of the Act.

Demonstrating rehabilitation and that an applicant's admission would not be contrary to the national welfare, safety or security of the United States pursuant to section 212(h)(1)(A) of the Act are requirements for eligibility, but once established are but some favorable discretionary factors to be considered. For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on her behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country.

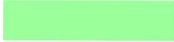
Matter of Marin, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character



(e.g., affidavits from family, friends, and responsible community representatives). .

..

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors include the applicant's lack of a criminal record following his conviction for possession of two grams of hashish in 1982, evidence of the applicant's long-term employment in the United States, letters of support from friends and colleagues attesting to the applicant's morals and ethics and evidence of the applicant's compliance with DHS regulations including maintenance of his lawful nonimmigrant status and obtaining nonimmigrant waivers of his inadmissibility.

The unfavorable factor in this matter is the applicant's conviction for a crime relating to a controlled substance.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.