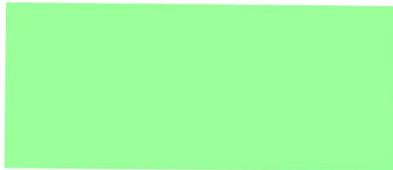
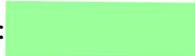


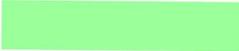


U.S. Citizenship
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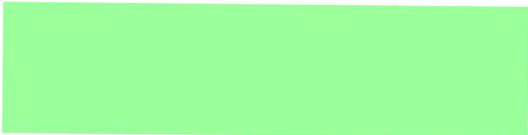
(b)(6)



DATE: FEB 23 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:


INSTRUCTIONS:

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
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 the United Kingdom who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude, and 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 crimes involving a controlled substance. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). He 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 determined that the applicant is not eligible for a waiver because his inadmissibility is not related to a single offense for simple possession of 30 grams or less of marijuana and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.¹ See *Decision of the Director*, dated July 14, 2014.

On appeal the applicant contends in the Notice of Appeal (Form I-290B) that the director erred in finding him ineligible for a waiver due to marijuana offenses. With the appeal the applicant submits a statement and a [REDACTED] from 1994 describing “cautioning” of offenders. The record contains statements from the applicant and his spouse, certificates and other documentation of the applicant’s technical training, a psychological evaluation and medical documentation for the applicant’s spouse, letters of support for the applicant, and documents related to the applicant’s criminal record. 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 —

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or

¹ The director also concluded that the applicant’s convictions for Using threatening, abusive, insulting words or behavior with intent to cause fear or provocation of violence, for Possessing offensive weapon in a public place, and for Destroy or damage property, were convictions of a “a violent or dangerous crime” as contemplated by 8 C.F.R. § 212.7(d) that would make the applicant subject to the heightened standard of exceptional and extremely unusual hardship to a qualifying relative.

conspiracy to commit such a crime, or

- (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:

The 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 first issue on appeal is whether the record supports a finding that the applicant was convicted of an offense relating to a controlled substance that renders him inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The field office director determined that the applicant is not eligible for a waiver because his inadmissibility is not related to a single offense for simple possession of 30 grams or less of marijuana and that police records indicate that the applicant has multiple marijuana violations.

On appeal the applicant contends that he is inadmissible for one crime involving a controlled substance for which there is a waiver available. The applicant asserts that the three “cautions” for cannabis resin that he received are not convictions within the meaning of Section 101(48)(A) of the Act because no court is involved. He further asserts that by accepting a caution an individual does not “admit” to a crime nor admit to committing acts which constitute the essential elements of the crime.

The applicant admits to one conviction for a controlled substance offence, as he was convicted on [REDACTED] 1999, of possession of a Class B Drug (cannabis resin) for which he was fined 80 pounds. The applicant states that although the record does not show the amount of marijuana in his possession he has stated in his declaration that he had less than 30 grams of marijuana in his possession when he was arrested.²

The record shows that the applicant was convicted of Section 5(2) of the Misuse of Drugs Act, 1971, which states:

Misuse of Drugs Act 1971 c. 38

² The applicant was convicted of possession of cannabis resin rather than marijuana. The drug equivalency of 1 gram of Cannabis Resin is 5 grams of marijuana. See *United States Sentencing Commission Supplement to the 2000 Guidelines Manual*, dated May 1, 2001, Drug Equivalency Table.

Restrictions relating to controlled drugs etc.

s. 5 Restriction of possession of controlled drugs.

5.— Restriction of possession of controlled drugs.

(1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.

(2) Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1) above

Penalties for violating this section of the act, as of [REDACTED] 1996, indicate a maximum of three months' imprisonment and, as of [REDACTED] 1995, a maximum fine of 2,500 pounds.

Section 291 of the Act, 8 U.S.C. § 1361, provides that, in the present proceeding, the burden of proof is upon the applicant to establish he is eligible for the benefit sought, in this case an immigrant visa as the spouse of a U.S. citizen.

Here the applicant's offence record does not indicate the amount of cannabis resin in his possession, and the statute does not indicate amounts of possession determinable by punishment. The applicant notes that the amount of marijuana may be established by probative evidence outside the record itself. However, in the case the only evidence offered by the applicant is his own declaration. The applicant may not benefit from his failure to produce sufficient explanation or evidence to settle a dispositive factual issue, and here the applicant's declaration alone is insufficient to establish that he is eligible for this waiver.

Accordingly, the applicant has not met his burden to show that he was erroneously deemed inadmissible under section 212(a)(2)(A)(i)(II) 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.