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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 2 7 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:

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
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 Jamaica 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 relating to a controlled substance, and pursuant to section 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i) for having been an illicit trafficker of a controlled substance. 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 found that the applicant is not eligible for a waiver under section 212(h) of the Act, as his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act is not related to a single offense for simple possession of 30 grams or less of marijuana, and there is no waiver for inadmissibility under section 212(a)(2)(C) of the Act; and he denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Director,* dated July 15, 2014.

On appeal, counsel asserts that the Director erred in denying the Form I-601 because the applicant was ordered removed from the United Kingdom and not the United States; and the applicant's ailing U.S. citizen father needs the applicant to assist him with his medical issues. *Letter in Support of Form I-290B, Notice of Appeal or Motion*, dated August 14, 2014.

The record contains, but is not limited to, counsel's statement, statements from the applicant and his family members, medical documentation, and the applicant's criminal records. The entire record was reviewed and considered in rendering this decision.

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 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(a)(2)(C) of the Act provides, in pertinent part, that:

> Any alien who the consular officer or the Attorney General [now Secretary of the Department of Homeland Security (Secretary)] knows or has reason to believe
>
> (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so...is inadmissible.

The record reflects that on December the applicant was convicted of possessing a controlled drug with intent to supply (class A, heroin) and possessing a controlled drug with intent to supply (class A, cocaine) in the United Kingdom, and he was sentenced to four years in prison concurrently and $300 in court costs.[1] The applicant asserts that he was not aware of the contents of a package his friend asked him to deliver to another friend; his public defender advised him that pleading guilty would not affect his immigration status in the United Kingdom; and he later learned that his guilty plea would prevent him from entering the United Kingdom and the United States.

The record establishes the applicant was convicted of the aforementioned crimes. The applicant provides no evidence showing that his convictions were vacated for reasons that would result in them not being considered convictions under the Act. Therefore, he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violating a law related to a controlled substance and section 212(a)(2)(C)(i) of the Act for having been an illicit trafficker of a controlled substance.

Section 212(h) of the Act provides, in pertinent part, that:

> The [Secretary] 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 applicant was not convicted of a single offense of simple possession of 30 grams or less of marijuana. Therefore his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act cannot be waived under section 212(h) of the Act. In addition, there is no waiver for inadmissibility under section 212(a)(2)(C)(i) of the Act. As such, the evidence of hardship to his father will not be addressed.

[1] The applicant was also convicted on August of two fraud-related offenses in the United Kingdom. We will not address whether these are crimes involving moral turpitude that would be render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as he is inadmissible, based on his drug-related convictions, under two other grounds that cannot be waived.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.