



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUN 01 2015**

FILE: [REDACTED]  
( [REDACTED] consolidated therein)  
APPLICATION RECEIPT: [REDACTED]

IN RE: Applicant: [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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Guyana who was found to be inadmissible to the United States pursuant to section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(C), for having been convicted of a crime involving a controlled substance. The applicant is seeking a waiver of inadmissibility so that she may reside in the United States.

The Director concluded that the applicant's conviction for importation of cocaine renders her inadmissible under section 212(a)(2)(C) of the Act, with no waiver available, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Director*, dated September 2, 2014.

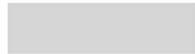
On appeal, the applicant submits a letter from her U.S. citizen daughter, who asserts that the applicant has positively reformed and is experiencing several serious health problems. *Letter in support of Form I-290B, Notice of Appeal or Motion*, filed October 2, 2014.

The record includes, but is not limited to: documentation of criminal proceedings; and a declaration from the applicant's daughter. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant arrived at [redacted] in [redacted] as a non-immigrant visitor on August 11, 1997. A U.S. customs officer discovered that the applicant had three packages of cocaine, amounting to approximately 2371 grams, taped to her body. She was convicted of importation of a controlled substance, cocaine, in violation of 21 U.S.C. §§ 952(a) and 960(b)(3) on [redacted] in the [redacted] of New York. As a part of her plea agreement, she filed a motion for a stipulated order of removal, and she was removed on October 8, 1998.

Section 212(a)(2) of the Act provides, in pertinent part, that:

- (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 conspiracy to commit such a crime, or
    - (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.

....

- (C) Controlled Substance Traffickers - Any alien who the consular officer or the Attorney General 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.

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

- (h) The Attorney General [now Secretary, Homeland Security (Secretary)] 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 [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 . . . .

On [redacted] in the [redacted] of New York, the applicant was charged with knowingly and intentionally importing into the United States a Schedule II controlled substance and with knowingly and intentionally possessing with intent to distribute a controlled substance. The record reflects that she was convicted for the importation of a controlled substance, cocaine, in violation of 21 U.S.C. §§ 952(a) and 960(b)(3) on [redacted], in the [redacted] of New York.

This conviction renders her inadmissible under section 212(a)(2)(A)(i)(II) of the Act, for having been convicted of an offense involving a controlled substance. The record also supports finding that the applicant is inadmissible under section 212(a)(2)(C)(i) of the Act, as there is "reason to believe" that the applicant has been a knowing assister or abettor in illicit trafficking in a controlled substance.

In order for an applicant to be inadmissible under section 212(a)(2)(C) of the Act, the only requirement is that an immigration officer “knows or has reason to believe” that the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled, or endeavored to do so. *Matter of Casillas-Topete*, 25 I&N Dec. 317, 321 (BIA 2010).

In the present matter, the conviction and other official documents in the record constitute reasonable, substantial, and probative evidence to show that the applicant was importing a controlled substance. She was charged of possessing a controlled substance with intent to distribute. An applicant may be deemed inadmissible under section 212(a)(2)(C)(i) of the Act even where there has been no admission and no conviction, so long as there is “reason to believe” that the applicant engaged in the proscribed conduct relating to trafficking in a controlled substance. In the present matter, there is reason to believe that the applicant knowingly assisted others in illicit trafficking in a controlled substance, reflected in the applicant’s criminal complaint, indictment, and Form I-862, Notice to Appear. The record therefore supports finding that the applicant is inadmissible under section 212(a)(2)(C)(i) of the Act.

No provision under the Act allows for waivers of inadmissibility under section 212(a)(2)(C)(i) of the Act. Moreover, except for offenses of possession of marijuana of 30 grams or less, no waiver of inadmissibility is available under section 212(a)(2)(A)(i)(II) of the Act for controlled substance violations.

Because the applicant is statutorily ineligible for relief under sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C)(i) of the Act, no purpose would be served in discussing whether she has demonstrated rehabilitation, whether she has established extreme hardship to a qualifying relative, or whether she 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 not been met.

**ORDER:** The appeal is dismissed.