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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



U.S. Citizenship  
and Immigration  
Services



Date: **MAY 05 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,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Jamaica who filed Form I-601, Applicant for Waiver of Grounds of Inadmissibility. He indicates on his Form I-601 that he is inadmissible to the United States pursuant to section 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B), for having been convicted of two or more offenses, other than political offenses, for which the combined sentences to confinement were five years or more. The applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act in order to reside in the United States.

The Director found that the applicant was not interviewed by a consular officer to determine visa eligibility and therefore not eligible to file Form I-601; the Form I-601, Applicant for Waiver of Grounds of Inadmissibility, was denied as a matter of law. *Decision of the Director*, dated July 30, 2014.

On appeal, counsel asserts that the Director erred in denying the Form I-601 as the applicant was not interviewed through no fault of his own; the applicant was unfairly prejudiced by the Director not considering the contents of the waiver application; the applicant's spouse has been suffering extreme hardship and has been prejudiced by the Director's actions; and the applicant's case should be reopened in order for him to schedule an interview where his Form I-601 can be properly adjudicated. *Statement Submitted with Form I-290B, Notice of Appeal or Motion*, dated August 29, 2014.

The record includes, but is not limited to, criminal records, a letter from the applicant's spouse, financial records and a social worker's evaluation. The entire record was reviewed and considered in arriving at a decision on the appeal.

8 C.F.R. §212.7 states, in pertinent part:

(a) *Filing and adjudication of waivers under sections 212(g), (h), or (i) of the Act.* (1) *Application.* Except as provided by 8 CFR 212.7(e), an applicant for an immigrant visa, adjustment of status, or a K or V nonimmigrant visa who is inadmissible under any provision of section 212(a) of the Act for which a waiver is available under section 212 of the Act may apply for the related waiver by filing the form designated by USCIS, with the fee prescribed in 8 CFR 103.7(b)(1), and in accordance with the form instructions. Certain immigrants may apply for a provisional unlawful presence waiver of inadmissibility as specified in 8 CFR 212.7(e).

The current Form I-601 instructions state:

#### Who May File This Form?

- 1) An immigrant visa applicant who is outside the United States who has had a visa interview with a consular officer and was found inadmissible...

The record does not include any evidence that the applicant had a visa interview with a consular officer and found inadmissible. Therefore, according to the Form I-601 instructions, he is not eligible to file Form I-601.<sup>1</sup>

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.

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<sup>1</sup> The record reflects that the applicant was convicted of attempting to possess marijuana with the intent to distribute in violation of 21 U.S.C. § 846, 18 U.S.C. § 2 and 21 U.S.C. § 841(b)(1)(B) on September 28, 2005. Based on the foregoing, we find that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violation of a law related to a controlled substance. He is not eligible for a waiver of this ground of inadmissibility under section 212(h) of the Act, as his conviction was not for a single offense of simple possession of 30 grams or less of marijuana. In addition, we find that there is sufficient reason to believe that the applicant has been an illicit trafficker in a controlled substance, and he is inadmissible under section 212(a)(2)(C)(i) of the Act. There is no provision under the Act that allows for a waiver of inadmissibility under section 212(a)(2)(C)(i) of the Act. Furthermore, the applicant is not eligible to file for a waiver under section 212(h) of the Act as he was admitted to the United States as a lawful permanent resident on December 12, 1984 and was subsequently convicted of an aggravated felony. Section 212(h)(2) of the Act. The applicant's attempted drug trafficking offense is an aggravated felony under section 101(a)(43)(U) of the Act, as it involved an attempt to commit an offense under section 101(a)(43)(B) of the Act .