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

U.S. Citizenship and Immigration Services

DATE: MAY 2 1 2015

IN RE:

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:

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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Nebraska Service Center Director, 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 Bahamas 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 involving a controlled substance. The applicant is married to a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of inadmissibility so that he may reside in the United States.

The Director concluded that the applicant's 1991 conviction for attempted possession of cocaine and his 1993 conviction for attempted purchase of cocaine render him inadmissible under section 212(a)(2)(A)(i)(II) 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 June 12, 2014.

On appeal, the applicant, through counsel, asserts that his conviction for an attempted possession of a controlled substance was not a violation of a law relating to a controlled substance. He also indicates that he will submit a brief or additional evidence within 30 days of filing the appeal. *Form I-290B, Notice of Appeal or Motion*, dated August 15, 2014. To date we have not received additional evidence or a brief from the applicant. The record therefore is considered complete as of the date of this decision.

The record includes, but is not limited to: documentation of criminal proceedings; declarations from the applicant's wife, son, mother, church members, and sister; a psychological evaluation and medical records. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant was convicted of attempted possession of cocaine, in violation of Florida Statutes § 893.13, on April 6, 1991. The applicant also was convicted of attempted purchase of cocaine, in violation of Florida Statutes § 893.13, on July 9, 1993.

Section 212(a)(2)(A) of the Act states, in pertinent part:

(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-
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> ...
>
> > (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.

On appeal, the applicant, through counsel, asserts that attempted possession or purchase of cocaine is

not a violation of a law relating to a controlled substance. The applicant does not submit legal authority for this assertion.

Section 212(h) of the Act provides a waiver for a 212(a)(2)(A)(i)(II) inadmissibility only where an applicant has been convicted of a single offense of simple possession of 30 grams or less of marijuana. The plain language of Section 212(a)(2)(A)(i)(II) specifically includes "attempt to violate" any law relating to controlled substance. This provision of law, therefore, is not limited to actual possession. The applicant in the present case has two controlled substance convictions involving cocaine, not marijuana. These convictions render him inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of offenses involving a controlled substance. Accordingly, no waiver is available to him under the Act.

Because the applicant is statutorily ineligible for relief under section 212(a)(2)(A)(i)(II) of the Act, no purpose would be served in discussing whether he has demonstrated rehabilitation, whether he has established extreme hardship to a qualifying relative, or whether he 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.