



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF D-R-D-

DATE: OCT. 13, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Jamaica, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Newark Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant 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 committed a controlled substance violation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse and children.

The Director determined that due to the Applicant's conviction he is ineligible for statutory relief and denied the waiver application accordingly. *See Decision of the Field Office Director* dated March 19, 2014.

On appeal, filed on April 14, 2014, and received by us on March 2, 2015, the Applicant asserts that the decision denying his waiver application erred in concluding that he was statutorily ineligible for a waiver. With the appeal the Applicant submits a brief and copies of previously-submitted material. 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 —

(b)(6)

*Matter of D-R-D-*

- (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 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:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) of this section 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)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that—

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and the alien has been rehabilitated; or

(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 Attorney General 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.

The record establishes that the Applicant was convicted on [REDACTED] 1999, in the State of Connecticut, Judicial Branch, [REDACTED] Criminal Courthouse, of Possession of a Controlled Substance, less than four (4) ounces of Marijuana, in violation of Connecticut statute § 21a-279c. The Applicant was sentenced to one year in jail, suspended, and two years of probation.

At the time of the Applicant's conviction the statute stated:

§ 21a-279. Penalty for illegal possession. Alternative sentences

- (c) Any person who possesses or has under his control any quantity of any controlled substance other than a narcotic substance, or a hallucinogenic substance other than marijuana or who possesses or has under his control less than four ounces of a cannabis-type substance, except as authorized in this chapter, for a first offense, may be fined not more than one thousand dollars or be imprisoned not more than one year, or be both fined and imprisoned; and for a subsequent offense, may be fined not more than three thousand dollars or be imprisoned not more than five years, or be both fined and imprisoned.

§ 53a-26. Misdemeanor: Definition, classification, designation

- (a) An offense for which a person may be sentenced to a term of imprisonment of not more than one year is a misdemeanor.

Based on the Applicant's conviction the Director found him ineligible for a waiver of inadmissibility. On appeal the Applicant asserts that he possessed less than 30 grams of marijuana. The Applicant maintains that the final disposition does not state that he was convicted for possessing four ounces of marijuana, that the statute cited supports that his conviction is for the least drug charge he could get in Connecticut, and that the conviction is considered a misdemeanor. The Applicant asserts that the police report states he was caught with six small plastic bags of marijuana. He contends that the police cannot now find a record of the amount of marijuana with him at the time he was charged and convicted and that the officer who handled the matter no longer works for the police department. The Applicant contends that the police said six small bags should be little more than half an ounce, but that no one would put that in writing.

The section 212(a)(2)(A)(i)(II) ground of inadmissibility includes any conviction for a controlled substance offense. However, section 212(h) of the Act provides for a discretionary waiver for an applicant for admission who has a single conviction for simple possession of 30 grams or less of marijuana and who meets the other statutory eligibility requirements. *See* Section 212(h) of the Act, 8 U.S.C. § 1182(h). In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

The Board of Immigration Appeals has held that where the amount and type of a controlled substance "that an alien has been convicted of possessing cannot be readily determined from the conviction record, the alien who seeks . . . relief must come forward with credible and convincing testimony, or other evidence independent of his conviction record, to meet his burden of showing that his conviction involved '30 grams or less of marihuana.'" *Matter of Grijalva*, 19 I&N Dec. 713, 718 (BIA 1988). Otherwise, the alien will remain inadmissible under section 212(a)(2)(A)(i)(II) of

(b)(6)

*Matter of D-R-D-*

the Act for a conviction relating to a controlled substance without the possibility of applying for a section 212(h) waiver. *Id.* at 724.

In the present case the Applicant has provided only a certified disposition of the possession of a controlled substance conviction, dated [REDACTED], 2012, under the name [REDACTED] and an Incident and Offense Report which indicates that when apprehended the Applicant had in his possession a bag containing six Zip Lock bags each with a "green plant substance." Neither the disposition nor incident and offense report establishes by a preponderance of the evidence that the Applicant was convicted of possession of 30 grams or less of marijuana. We note that the Applicant has submitted to the record letters dated December 8, 2010, and March 22, 2012, from the State of Connecticut Superior Court Records Center noting that his case has been physically destroyed in accordance with the Connecticut Practice Book. The record does not clearly support a finding that the applicant's conviction was for simple possession of 30 grams or less of marijuana. Accordingly, he is not eligible for the limited waiver available for marijuana possession under section 212(h). Thus, we conclude that the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act, and no waiver is available.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of D-R-D-*, ID# 13013 (AAO Oct. 13, 2015)