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

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

MATTER OF K-H-

DATE: OCT. 23, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of the United Kingdom, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(h), 8 U.S.C. § 1182(h). The Director, Nebraska Service Center, denied the application. A subsequent appeal was dismissed. The matter is now before us on a motion to reopen and reconsider. The motion will be denied.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude, and section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of crimes 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 pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

In a July 14, 2014, decision, the Director determined that the Applicant was not eligible for a waiver because his inadmissibility was not related to a single offense for simple possession of 30 grams or less of marijuana. The Director also concluded that the Applicant's convictions for Using Threatening, Abusive, Insulting Words or Behavior with Intent to Cause Fear or Provocation of Violence, for Possessing Offensive Weapon in a Public Place, and for Destroy or Damage Property, were convictions of a "a violent or dangerous crime" as contemplated by 8 C.F.R. § 212.7(d) that would make the Applicant subject to the heightened standard of exceptional and extremely unusual hardship to a qualifying relative. The waiver application was denied accordingly.

On appeal, we concluded that the Applicant had not established that he was erroneously deemed inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The appeal was dismissed accordingly.

The Applicant contends that the documentation submitted on motion supports his assertion that he is eligible for a waiver because his conviction was based on simple possession of less than 30 grams of marijuana. With the motion the Applicant submits a statement, an April 17, 2015 letter and report from the [REDACTED] Police, and a 1998 study of cannabis resin and cannabis in hand rolled cigarettes seized in the Republic of Ireland. The entire record was reviewed and considered in rendering this decision.

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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 —
 - (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, in pertinent part, that:

The Attorney General 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

As we previously detailed, the record establishes that the Applicant was convicted on [REDACTED] 1999 of Possession of a Class B Drug Namely Cannabis Resin, in violation of Section 5(2) of the Misuse of Drugs Act, 1971, which states:

Misuse of Drugs Act 1971 c. 38

5.— Restriction of possession of controlled drugs.

(1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.

(2) Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1) above

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Inadmissibility for a controlled substance violation may only be waived under section 212(h) as it relates to the simple possession of 30 grams or less of marijuana. For purposes of a section 212(h) waiver of the applications of section 212(a)(2)(A)(i)(II) of the Act, the Board 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 or 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 the Act for a conviction relating to a controlled substance without the possibility of applying for a section 212(h) waiver. *Id.* at 724.

On motion the Applicant submits a report from the [REDACTED] Police noting "AA Cannabis – Resin" in a quantity of “one small lump for personal use.” The Applicant contends that this report, along with the study of cannabis resin and cannabis in hand rolled cigarettes seized in the Republic of Ireland, supports his assertion that he is eligible for a waiver of inadmissibility. We note that other than an attached letter from the [REDACTED] Police addressed to the Applicant and dated April 17, 2015, the above-referenced report does not otherwise identify the Applicant nor does it indicate a specific amount of cannabis resin. We also reiterate that the Applicant was convicted of possession of cannabis resin, a more potent form of marijuana under the sentencing guidelines. The drug equivalency of 1 gram of Cannabis Resin is 5 grams of marijuana. *See United States Sentencing Commission Supplement to the 2000 Guidelines Manual*, dated May 1, 2001, Drug Equivalency Table.

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 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 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 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 motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of K-H-*, ID# 13774 (AAO Oct. 23, 2015)