



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

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

MATTER OF A-T-S-

DATE: JAN. 19, 2016

APPEAL OF NEW YORK DISTRICT OFFICE DECISION

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

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

The Director found the Applicant to be inadmissible to the United States under 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 cocaine possession, a controlled substance violation under section 102 of the Controlled Substances Act. In a decision dated March 31, 2015, the Director found that the Applicant's conviction was for a controlled substance other than marijuana and he was thus ineligible for a waiver under section 212(h) of the Act and denied the application accordingly.

On appeal, the Applicant asserts USCIS erred in finding him ineligible for relief and claims the statutory limitations do not apply to individuals who are not yet permanent residents. It is undisputed that the Applicant was convicted of an offense under section 212(a)(2)(A)(i)(II) of the Act, as the Applicant notes having pleaded guilty to cocaine possession. The record contains an appeal brief, support letter explaining the circumstances of the Applicant's arrest and conviction, and evidence previously submitted in support of his waiver application. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

....

(II) a violation of (or a conspiracy of 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:

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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*. . . . [emphasis added]

....

No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. . . .

Pursuant to section 212(h) of the Act, an applicant is only eligible for a waiver of section 212(a)(2)(A)(i)(II) inadmissibility if he has committed just a single offense involving marijuana possession in an amount not greater than 30 grams. As it is undisputed that the Applicant has a conviction for cocaine possession, he does not meet the threshold requirement to seek a waiver under section 212(h).

The Applicant asserts that these eligibility limitations do not apply to him because he is not yet a U.S. lawful permanent resident. The cases he cites in support of this proposition, however, do not support his claim that individuals not previously admitted as lawful permanent residents are eligible for a section 212(h) waiver for a controlled substance offense other than a single offense of simple possession of 30 grams or less of marijuana. Rather, in *Matter of Michel*, the Board of Immigration Appeals merely clarified that “the aggravated felony bar to eligibility for relief applies only to an alien who has previously been admitted to the United States for lawful permanent residence.” 21 I&N Dec. 1101, 1104 (BIA 1998). Section 212(h) of the Act limits waiver eligibility in certain cases for aliens lawfully admitted for permanent residence, including those convicted of an aggravated felony after being admitted. This provision merely states a further limitation on waiver availability for individuals otherwise meeting the threshold requirement to apply for a waiver under section 212(h) of the Act.

In the present matter, the Applicant’s cocaine offense renders him ineligible for a waiver under section 212(h), which is only available for one offense involving simple possession of marijuana, and the fact he is not a lawful permanent resident has no bearing. As the Applicant is statutorily ineligible for a waiver of inadmissibility, the appeal will be dismissed.

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.

*Matter of A-T-S-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-T-S-*, ID# 15068 (AAO Jan. 19, 2016)