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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-A-M-

DATE: MAY 31, 2016

APPEAL OF MIAMI FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Cuba, seeks a waiver of the ground of inadmissibility for a crime involving moral turpitude. *See* Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Kendall Field Office Director, Miami, Florida, denied the application. The Director concluded the Applicant was statutorily ineligible for a waiver of inadmissibility because he is inadmissible under section 212(a)(2)(C) of the Act for illicit trafficking in a controlled substance, for which no waiver is available.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Applicant's conviction for misprision of a felony is his only conviction, that there is not sufficient reason to believe the Applicant trafficked a controlled substance and is inadmissible under section 212(a)(2)(C) of the Act, and that he qualifies for a waiver because his mother will experience extreme hardship due to his inadmissibility.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a crime involving moral turpitude. Specifically, the Applicant was convicted on 2003, of misprision of felony in the in violation of Title 18 U.S.C. section 4. Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides, in pertinent parts:

(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 a 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.

Individuals found inadmissible under section 212(a)(2)(A) of the Act may seeks a waiver of inadmissibility under section 212(h). Section 212(h) of the Act provides, in pertinent parts:

> The [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 if -
>
> > (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary of Homeland Security] that –
> >
> > > (i) . . . 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
> > >
> > > (iii) 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 [Secretary of Homeland Security] 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 Applicant has also been found inadmissible as a controlled substance trafficker under section 212(a)(2)(C) of the Act. Specifically, the Applicant was caught at a border patrol checkpoint driving

with over 100 pounds of marijuana in the trunk of his car, which resulted in his conviction upon plea of guilty of misprision of a felony, referenced above.

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

> (C) Controlled Substance Traffickers - Any alien who the consular officer or the Attorney General knows or has reason to believe—
>
> > (i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so . . . is inadmissible.

II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible under section 212(a)(2)(C) of the Act and whether the Applicant is eligible to apply for a waiver under section 212(h) of the Act. The record establishes that the Applicant was convicted of misprision of a felony on September 15, 2003, and the Applicant claims on appeal that he is not inadmissible pursuant to section 212(a)(2)(C) of the Act because his conviction for misprision of a felony is not sufficient to support a reason to believe that he was involved in drug trafficking. The Applicant cites to *Garces v. U.S. Att'y Gen.*, 611 F.3d 1337 (11th Cir. 2010), in support of this claim. The record contains a copy of the judgment against the Applicant for misprision of a felony, the Pre-Sentencing Report for the Applicant's conviction, and other court records related to his conviction.

The record supports the determination by the Field Office Director that the Applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act. Further, as there is no waiver available for inadmissibility under section 212(a)(2)(C) of the Act, no purpose would be served in determining whether he has established eligibility for a waiver under section 212(h) of the Act for his conviction for a crime involving moral turpitude.

A. Inadmissibility

The record indicates that on 2003, the Applicant was arrested by U.S. Customs and Border Protection (CBP) in Texas, when, upon inspection at a border patrol checkpoint, a suitcase containing over 100 pounds of marijuana was discovered in the trunk of the vehicle he was driving. The Applicant was initially charged with trafficking in a controlled substance, but was later convicted upon plea of guilty of misprision of a felony in the

The Applicant, who resides in the jurisdiction of the Eleventh Circuit, has cited to *Garces v. U.S. Att'y Gen.*, 611 F.3d 1337 (11th Cir. 2010), to support his claim that there is insufficient reason to believe he was involved in controlled substance trafficking. In *Garces,* the Eleventh Circuit held that in the particular circumstances of that case, an alien's vacated guilty plea along with police reports, were not sufficient to find reason to believe the alien trafficked in controlled substances. 611 F.3d 1337, 1350 (11th Cir. 2010). Though the Eleventh Circuit recognized that the "reason to believe" standard does not require evidence that an alien actually handled a drug transaction, the court noted that "there must be some reasonable, substantial, and probative evidence that [the alien was] a 'knowing and conscious participant'" in a drug-related offense. *Id.* at 1350.

Inadmissibility under section 212(a)(2)(C) of the Act applies when the adjudicator "knows or has reason to believe" that the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled, or endeavored to do so. *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977); *see also Garces*, *supra,* at 1345-46; *Alarcon-Serrano v. INS*, 220 F.3d 1116, 1119 (9th Cir. 2000). In order for the adjudicator to have sufficient "reason to believe" that an applicant has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by "reasonable, substantial, and probative evidence." *Matter of Rico*, 16 I&N Dec. at 185. A conviction or a guilty plea is not necessary to find a "reason to believe." *Castano v. INS,* 956 F.2d 236 (11th Cir. 1992); *Nunez-Payan v. INS,* 815 F.2d 384 (5th Cir. 1987); *Matter of Favela*, 16 I&N Dec. 753 (BIA 1979).

In *Garces*, there was very little information given in the police reports and the corroborating conviction had been vacated. *Id.* at 1344, 1349. The court noted that the police reports stated the police officers' conclusions rather than recording their observations of facts sufficient to show guilt. *Id.* at 1349. The Court further stated that in their previous decisions and in decisions by the Board, "reason to believe" has been upheld in cases where the alien either admitted that he or she had trafficked in drugs, or he or she was caught with a significant quantity of them. *Id.* at 1350.

In the present case, the pre-sentence investigation report and a statement by the U.S. CBP agent that encountered the Applicant indicate that the Applicant was stopped while driving a car containing a large quantity marijuana in the trunk and that the Applicant accepted responsibility for his role in the offense. The report by the CBP agent provides extensive detail concerning the facts of their encounter with the Applicant that led to his arrest. The record indicates that the Applicant was arrested in [redacted] Texas, after being caught with over 100 pounds of marijuana in the trunk of the car he was driving. He was initially charged with controlled substance trafficking and was convicted after a plea bargain of misprision of a felony, which requires active concealment of a known felony. The pre-sentence report and statement from the arresting agent provide detail corroborating the circumstances surrounding his arrest, and we find there is sufficient reason to believe that the Applicant aided, abetted, assisted or colluded in the trafficking of a controlled substance and is therefore inadmissible pursuant to section 212(a)(2)(C) of the Act.

B. Waiver

There is no waiver available for inadmissibility under section 212(a)(2)(C) of the Act. We therefore conclude that no purpose would be served in determining whether the applicant is eligible for waiver under section 212(h) of the Act for his conviction for a crime involving moral turpitude, as granting the waiver would not result in his admissibility.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of R-A-M-*, ID# 16184 (AAO May 31, 2016)