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



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FILE: [Redacted] Office: BALTIMORE, MD Date: MAR 09 2011

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Stummway
for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident of the United States. He sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant submitted a timely appeal.

In the notice of intent to dismiss dated November 24, 2010 the AAO found that the applicant's spouse would experience extreme hardship were she to remain in the United States without the applicant, and if she were to join the applicant to live in Haiti. Thus, the AAO concluded that the applicant established extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

However, the AAO also noted that the record showed that the applicant was arrested for two drug related offenses in Florida in 1987. Section 212(a)(2)(A)(i)(II) of the Act states that an alien is inadmissible for having been convicted of a crime involving a controlled substance. That section provides in pertinent part:

(2) 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)(II) . . . insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if – . . . in the case of an immigrant who is 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 permanent resident spouse, parent, son, or daughter of such alien.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

In the notice of intent to dismiss, the AAO indicated that the certificate of disposition from the Criminal Court of [REDACTED] shows that the applicant was charged with criminal possession of a controlled substance in the fourth degree in violation of [REDACTED] Penal Law § 220.09, and that the charge was dismissed on April 22, 1988 and the record sealed pursuant to [REDACTED] Criminal Procedure Law § 160.50. Thus, we found that this charge does not render the applicant inadmissible under section 212(a)(A)(i)(II) of the Act.

However, we determined that the applicant had not submitted the available documents relating to the first drug charge, which was for criminal possession of a narcotic drug with intent to sell. If the applicant was convicted of this charge, he would be inadmissible under section 212(a)(2)(A)(i)(II) of the Act. Given the nature of the charge, the applicant may also be inadmissible under section 212(a)(2)(C) of the Act, for which no waiver is available.

In response to the notice of intent to dismiss, the applicant submitted a certificate of disposition from the Criminal Court of [REDACTED] that relates to the crime of criminal possession of a controlled substance in the fourth degree discussed above, and is the same as the prior certificate of disposition. Thus, the applicant has not provided police or court documentation showing the disposition of or otherwise related to the charge of criminal possession of a narcotic drug with intent to sell. The applicant has provided no documentation, in accordance with the requirements in 8 C.F.R. § 103.2(b)(2), establishing that court documents for any conviction are unavailable. The applicant has asserted that the charges against him were dismissed, but he has not supported this assertion with any documentation. As such, a question remain as to whether the applicant is inadmissible under sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, and whether he is eligible for a waiver of inadmissibility under section 212(h).

Therefore, although the applicant has met the requirements for a waiver of inadmissibility under section 212(i) of the Act, approval of the applicant's waiver application serves no present purpose as the applicant may be inadmissible under grounds of inadmissibility for which no waiver is available, or, if a waiver under section 212(h) is available, must still demonstrate that he is eligible for and warrants approval of such a waiver

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden with regards to proving that he is eligible for a waiver of all the grounds of inadmissibility in question. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.