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

U.S. Citizenship and Immigration Services

[redacted]

H5

Date: FEB 2 1 2012 Office: LOS ANGELES FILE [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry 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 Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. The director stated in his decision denying the waiver application that the applicant was inadmissible under section 212(a)(2)(C) of Act, 8 U.S.C. § 1182(a)(2)(C), for being a controlled substance trafficker or a knowing aider, abettor, assister, conspirator, or colluder with others, and that there is no waiver available for inadmissibility under section 212(a)(2)(C) of the Act.

On appeal, counsel contends that director cites the applicant's arrests in 1992 and 1998 for suspicion of possession for sales of controlled substances to find the applicant inadmissible under section 212(a)(2)(C) of Act. Counsel asserts that the director based this determination on police reports and public property records, but failed to specify the exact nature of the applicant's offense. Counsel maintains that it is not clear from the director's decision that the applicant is suspected of trafficking drugs or being a knowing assister, abettor, conspirator, or colluder. Citing *Alarcon-Serrano v. INS*, 220 F.3d 116 (9th Cir. 2000), counsel declares that the director's finding of inadmissibility under section 212(a)(2)(C) of Act was not based on reasonable, substantial, or probative evidence. Counsel indicates that the applicant's sons were also arrested on the same dates as the applicant, and that the applicant's sons were convicted of possession for sale of a controlled substance in the 1992 and 1998 arrests. Counsel claims that the district attorney found sufficient evidence to convict the applicant's sons, who were living with the applicant at the time of their arrests, but did not bring charges against the applicant due to lack of evidence. Counsel asserts that this indicates that the applicant was not involved in drug trafficking or aiding or abetting. Counsel maintains that the director's finding of inadmissibility under section 212(a)(2)(C) of Act is not reasonable in that it is contrary to the facts and not based on substantial evidence because the facts exonerate the applicant.

Counsel cites *Pronsivakulchai v. Gonzales*, 461 F.3d 903 (7th Cir. 2006), and contends that the applicant's right to procedural due process was violated because the applicant was not provided with an opportunity to rebut or present evidence in his defense in regard to the police records and prior to denying the waiver application. Counsel states that the applicant attempted to obtain copies of the records for the 1992 and 1998 arrests and was informed that they were destroyed and therefore not available. Counsel states that the director cites these "destroyed" documents as the basis for the finding of inadmissibility.

Section 212(a)(2)(C)of the Act provides that:

> (C) Controlled Substance Traffickers - Any alien who the consular officer or the Attorney General knows or has reason to believe--
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> > (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.

On April 8, 1998, in Los Angeles, California, the applicant was arrested for possession of marijuana for sale in violation of 11360(A) of the Health and Safety Code of California. The arrest report dated April 9, 1998, stated that detectives had received information from confidential reliable informants that marijuana was being sold from which are three houses that share a common driveway and are situated on one property. The arrest report stated that one confidential reliable informant stated that the applicant was involved in the sales of marijuana and that the applicant drove a green Honda. The arrest report stated that an untested confidential informant (CI) stated that "marijuana was being sold from the above locations by a heavy set male Hispanic known to the CI as "Spank". The CI stated that "Spank's" family lived at the location, but that "Spank" did not. The CI stated that "Spank" would arrive at the locations in the morning to conduct his marijuana sales. The arrest report conveys that the detectives established an observation post of the above described houses and within 15 minutes observed activities of the applicant's sons, as well as that of other people that were "consistent with the selling/delivering of narcotics." The arrest report stated, in relevant part, the following:

> At approximately 1000 hours, my partner, , established an observation post which gave him a clear view of the front of the locations. After approximately 15 minutes, observed two male Hispanics . . . [leave the location and enter a white Oldsmobile that was parked out front. further observed [carrying a red/white package. The left the location and returned approximately 5 minutes later. When [ ] and] returned to the location, they parked the vehicle in front, exited and went toward the back houses while [ ] remained in the vehicle.] returned to the vehicle approximately two minutes later carrying a red/white package. The vehicle left the location and returned a few minutes later. These actions are consistent with the selling/delivering of narcotics. At approximately 1030 hours, [arrived at the location in a brown Honda . . . and pulled into the driveway. As exited his vehicle, observed him carrying a red/white package. . . . [then walked toward the rear residences. Approximately 5 minutes later, enterd the brown Honda and left the location. Believing that these were involved with narcotics sales, I requested assistance and until 18Z3 . . . responded and conducted a traffic stop on the brown Honda . . . I approached the vehicle and asked if I could speak to them . . . I asked them where they were coming from and where they lived. [stated from and that he lives there. [ ] stated that he does not live there, but his family does.
>
> At that time, s advised me that a male black in a white pick up truck had arrived at the location, met with] and . . . [ ] . . . He then observed the male Black and] walk down the driveway out of his view while stood out on the sidewalk looking up and down the street appearing to act as a lookout. A few minutes later, the male black exited carrying a package. The male black then reentered his truck and left the location. These action are also consistent with narcotics sales. . . . At approximately 1045 hours, Det Walthers observed a gray Chevy Lumina with two male Black occupants and [park in front of the location. The passenger exited the vehicle and met with [in the driveway.

Again, [walked down the driveway out of view, while [remained out front and appeared to act a lookout. A few minutes later, [ ] exited the location carrying a white package. [entered the Lumina and left the location. I, Ofcr Seguin, followed the vehicle while requesting a black/white unit to conduct a traffic stop . . . As the officers were attempting to have the exit the vehicle, [opened his door, threw the white package on the ground, jumped the freeway wall and ran southbound. . . . I recovered the item that [threw and found it to be a torn white plastic bag containing compressed green plant material resembling marijuana wrapped in clear plastic . . . Also recovered from [was $3,290.00 US currency . . .

During this time, observed a green Honda drive by the location and stop up the street. He then observed the green Honda leave and come back approximately 30 seconds later and again pull to the curb away from the location. Again the Honda left and returned approximately 30 seconds later. This time, the Honda pulled in front of the location and an older male Hispanic exited, approached the location and then walked out of view. As my partner and I, along with additional narcotics officers were responding to the location to further our investigation, observed the green Honda leaving the location. Believing that his individual was involved with the narcotics sales, . . . conducted a traffic stop. They found the occupant to be and that he lived at They also found him to be carrying a large sum of money (later found to be $1094.00) . . .

In my presence, recovered the red/white UPS package that had been thrown over the fence by [ ] and I found it to contain several clear cellophane bindles containing green plant material resembling marijuana . . . In plain view from a rafter in a storage area between recovered, in my presence, a loaded .38 cal revolver . . . and misc used cellophane packaging . . . In plain view in an area in front of I recovered (2) large rolls of cellophane . . . numerous red/white and blue/white plastic UPS envelopes . . . and (3) used red/white plastic UPS envelopes . . . I also recovered compressed green plant material resembling marijuana wrapped in clear cellophane . . . from a DJ control box in the same area in front of Recovered from [ ] was $3267.00 . . . and a black plastic pager . . . Recovered from [ ] was $885.00 . . . Recovered from [was $670.00 . . . While at the location I observed additional used cellophane wrapping and bits of marijuana in areas in plain view to all the residents at the location, appearing to me that large quantities of marijuana have been at that location.

. . .

Based on our observations sever in possessions of red/white packages and then recovering a red/white package containing marijuana, the quantity of marijuana recovered, the packaging materials recovered in plain view and the large sums of money recovered from the it is my opinion that , are involved in a conspiracy of selling large qualities of marijuana.

The arrest report conveyed that is a gang member and that his moniker is "" In addition, the arrest report indicated that S lived at Road in and that in the apartment where he lived there were diaper bags containing United States currency, clear cellophane bindles containing compressed green plant material resembling marijuana, and clear cellophane bindles containing white powder resembling cocaine. In the apartment there was also a .22 cal revolver, and numerous red/white plastic UPS envelopes.

The ground of inadmissibility is under section 212(a)(2)(C) of the Act, being a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in a controlled substance. In order for a person to be inadmissible under section 212(a)(2)(C) of the Act, the only requirement is that an immigration officer "knows or has reason to believe" that the person 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 a controlled substance, or endeavored to do so. *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9th Cir. 2000). In order for an immigration officer 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." *Id.* (citing *Hamid v. INS,* 538 F.2d 1389, 1390-91 (9th Cir.1976)).

Counsel claims that the district attorney found sufficient evidence to convict the applicant's sons, and did not bring charges against the applicant due to lack of evidence, which is an indication that the applicant was not involved in drug trafficking or aiding or abetting. A person may be inadmissible under section 212(a)(2)(C)(i) of the Act even where there has been no admission and no conviction, so long as there is "reason to believe" that the person engaged in the proscribed conduct relating to trafficking in a controlled substance. *Alarcon-Serrano*, 220 F.3d 1116 at 119. In *Lopez-Umanzor v. Gonzales*, 405 F.3d 1049 (9th Cir. 2005), the Ninth Circuit stated that section 1182(a)(2)(C) does not require a conviction, but only a "reason to believe" that the alien is or has been involved in drug trafficking. (citing *Lopez-Molina v. Ashcroft,* 368 F.3d 1206, 1209 (9th Cir.2004)). In *Rojas-Garcia v. Ashcroft,* 339 F.3d 814 (9th Cir. 2003), the Ninth Circuit upheld the Board's decision to deny an application, finding there was sufficient reason to believe that the alien was involved in drug-trafficking because, in addition to a previous arrest for drug trafficking, two undercover detectives gave testimony that they had personally arranged drug deals with 339 F.3d 814 at 817-818, 823. was not convicted of drug-trafficking. *Id.* at 823, n. 9.

Upon review, there is sufficient "reason to believe" that the applicant is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in trafficking a controlled substance. Decisions upholding "reason to believe" determinations have had considerable substantial evidence such as when the alien either admits that he had trafficked in drugs, or was caught with a significant quantity of drugs. *See Matter of Favela,* 16 I&N Dec. 753, 754 (BIA 1979) (alien "admitted his conscious participation" in attempt to smuggle marijuana); *Matter of Rico,* 16 I&N Dec. 181, 182-83 (BIA 1977) (Drug Enforcement Agency, Border Patrol, and Customs agents testified that alien was caught at the border with 162 pounds of marijuana in his truck; alien told agents he knew "something" was in the truck and offered to give information on other drug traffickers; alien's later story of only borrowing the truck for the day was contradicted by agents' testimony of seeing the alien cross the

border several times before in the same vehicle); and *Matter of R-H-,* 7 I&N Dec. 675, 678 (BIA 1958) (alien admitted helping dealer deliver marijuana cigarettes to customers).

In the instant case, the applicant was arrested on June 16, 1992 for possession of marijuana for sale in violation of section 11359 of the Health and Safety Code of California in Los Angeles, California. In regard to this arrest, the applicant provided a letter from the Police Administrator Commanding Officer with the Records and Identification Division of the Los Angeles Police Department dated September 19, 2008, stating that the applicant was released as the district attorney rejected prosecution.

The applicant was also arrested on April 8, 1998, in Los Angeles, California, for possession of marijuana for sale in violation of section 11360(A) of the Health and Safety Code of California. In regard to the 1998 arrest, the applicant was requested to provide to U.S. Citizenship and Immigration Services the final court disposition of the 1998 arrest. The applicant submitted a letter from the executive officer/clerk with Criminal Justice Center in Los Angeles, California, dated October 17, 2008, stating that the misdemeanor/felony indexes did not contain a record regarding the applicant. But the applicant has not submitted a certified document from the Los Angeles Police Department stating that prosecution was declined for the April 8, 1998 arrest or a document from the custodian of records with the courthouse having jurisdiction of the applicant's case indicating whether charges were brought against the applicant and the final disposition of those charges. Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish eligibility for the benefit sought. We therefore find unpersuasive counsel's contention that the applicant attempted to obtain copies of the records for the 1992 and 1998 arrests and was informed that they were destroyed and therefore not available.

Counsel asserts that the applicant's right to procedural due process was violated because the applicant was not provided with an opportunity to rebut or present evidence in regard to the police records. Even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has an opportunity on appeal to rebut the finding of inadmissibility under section 212(a)(2)(C) of Act.

Thus, based on the evidence in the record, the AAO finds that there is "reasonable, substantial, and probative evidence" to believe that the applicant is or has been an illicit trafficker or a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in a controlled substance. In view of the applicant's two arrests in 1992 and 1998 for possession of marijuana for sale; and on the events described in the 1998 arrest report conveying that the applicant's sons (one of whom no longer lived with the applicant) sold marijuana from , which is the location where the applicant lives; that the applicant was found with a large sum of cash shortly after the arrests of his sons and others in 1998; and on the fact that one of the sons was convicted of selling marijuana in 1992 and in 1998; and finally, on the failure of the applicant to provide the disposition of his 1998 arrest, we find the applicant is inadmissible under section 212(a)(2)(C) of the Act for which no waiver is available.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.