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



U.S. Citizenship
and Immigration
Services

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MAR 05 2010

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:



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 or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. The applicant is the mother of a U.S. citizen, and now seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States.

The Director concluded that the applicant was ineligible to apply for a § 212(h) waiver, and, further, that the record contained no evidence of hardship to the applicant's child. She denied the Application for Waiver of Grounds of Excludability (Form I-601) on August 16, 2007.

On appeal, counsel for the applicant cites *Lopez v. Gonzalez*, 549 U.S. 47 (2006), and contends that the applicant is eligible to apply for a waiver. He further states that evidence of hardship will be forthcoming. As of this date, no additional evidence has been received and the record will be considered complete.

The record indicates that the applicant was convicted of Possession of a Controlled Substance (Cocaine), § 481.115 of the Texas Health and Safety Code, on June 4, 1996 under the name of [REDACTED]

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-
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
 - (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.

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

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) 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—

(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 Attorney General [Secretary] 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 in this matter was convicted of Possession of a Controlled Substance (Cocaine), § 481.115 of the Texas Health and Safety Code, on June 4, 1996. Inadmissibility under section 212(a)(2)(A)(i)(II) of the Act may be waived only as it relates to a single offense of simple possession of 30 grams or less of marijuana. Therefore, the applicant is ineligible for waiver consideration under section 212(h). The case cited by counsel pertains to a cancellation of removal appeal under section 240A(a)(3) of the Act for a lawful permanent resident and has no bearing on this proceeding. This proceeding pertains to an Application for Waiver of Grounds of Inadmissibility under section 212(a)(2)(A)(i)(II) in relation to an adjustment of status application. Section 212(a)(2)(A) of the Act clearly states that any conviction relating to a controlled substance renders an applicant inadmissible to the United States.

Having found that a waiver is not available to the applicant in the present case, no purpose would be served in determining whether the record establishes that the applicant's child would suffer extreme hardship, as required for waiver approval under section 212(h) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, 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.