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

U.S. Citizenship and Immigration Services

[redacted]

T/6

Date: JUL 0 6 2011 Office: ATHENS, GREECE FILE: [redacted]

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Athens, Greece and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Morocco and a citizen of Morocco and Israel who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. He was also found inadmissible under section 212(a)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A), for having been convicted of a crime involving a controlled substance and for having been convicted of crimes involving moral turpitude. The applicant is the spouse of a U.S. citizen and has a U.S. citizen son. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated May 27, 2008, the OIC found that in 1979 the applicant was convicted of possessing or using a controlled substance, but failed to present any documentation about the conviction. The OIC also cites to numerous other criminal convictions occurring from 1979 to 1988, including assault with bodily harm, assaulting a police officer under aggravating circumstances, and aggravated assault while carrying a weapon. The OIC found that the applicant's removal on October 13, 2006 established his unlawful presence in the United States from April 1, 1997 to October 13, 2006. The OIC then found that the applicant failed to establish extreme hardship to his qualifying relative as a result of his inadmissibility. The application was denied accordingly.[1]

In a Notice of Appeal to the AAO (Form I-290B), dated June 15, 2008, the applicant restates when he entered and departed the United States. He also states that his son had to have open-heart surgery and requires medical attention and that his spouse suffers from anorexia. Finally, the applicant states that he was very young when he committed the crimes in his past and he would like one more chance to come to the United States.

The AAO notes that the applicant has a lengthy criminal record which begins in 1979 and a lengthy immigration record which begins with his first entry into the United States in 1991. The United States Citizenship and Immigration Services' (USCIS) record establishes that the applicant has been inconsistent in producing his criminal record, in particular, the specific crimes he was charged with to USCIS. The documentation submitted regarding court dispositions and official records has also been inconsistent.

In her decision, the OIC sets forth the applicant's criminal record as follows: 1979 convictions for possessing and using a controlled substance and breaking into a residence with the intent to

[1] The AAO notes that the OIC also denies the applicant's Application for Permission to Reapply for Admission (Form I-212) in her denial of the applicant's waiver application, stating that the unfavorable factors in the applicant's case outweigh the favorable factors.

steal; 1983 convictions for aggravated assault while carrying a weapon and theft; 1984 convictions for theft and trespass with the intent to commit an offense; 1986 convictions for breaking into a residence and bearing an instrument to commit a felony; a 1988 conviction for assaulting a police officer under aggravating circumstances; and a 1989 conviction for assault with bodily harm. All of these convictions occurred in Israel. The applicant, born on June 1, 1961, was eighteen years old or older at the time the offenses were committed. The AAO notes that with the exception of the controlled substance offense the applicant does not dispute his criminal record as recited by the OIC and that numerous records from Israel submitted in connection with the applicant's removal proceedings in 1995-1999 substantiate this criminal record.

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

> (1) 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)(I), (B), (D), and (E) or 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.)

The AAO notes that the record contains a letter from the National Police Headquarters in Jerusalem, Israel, dated August 12, 2008, regarding the applicant filing to cancel his criminal file

from 1979. The letter states that the applicant's claim regarding the 1979 record not being relevant to him was examined, but could not be verified because no fingerprints were taken at that time.

In addition, immigration court records, dated July 28, 1999, state that the applicant was found inadmissible and deportable based on section 212(a)(2)(A)(i) of the Act listing his 1979 conviction for possessing a controlled substance as one of the charges. The AAO also notes that the record contains a copy of a Board of Immigration Appeals (BIA) decision, dated March 24, 1998, which remanded the January 14, 1997 decision of an immigration judge who terminated the deportation proceedings against the applicant because the applicant had departed the United States. The BIA found, in accordance with *Matter of Brown*, 18 I&N 324 (BIA 1982), that an alien charged with deportability based on a narcotics conviction could not defeat deportation proceedings by merely departing the United States and reentering, thus reinforcing other documentation in the record regarding the applicant's conviction for a controlled substance violation.

The AAO notes that a section 212(h) waiver is generally not available to section 212(a)(2)(A)(i)(II) cases involving controlled substance crimes and that the Act makes it very clear that the section 212(h) waiver applies only to controlled substance cases that involve a single offense of possession of 30 grams or less of marijuana. In this case, the applicant has failed to provide documentation to show that his controlled substance conviction involved only 30 grams or less of marijuana. In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. As the applicant has not provided any documentation to show that his controlled substance violation involved only 30 grams of marijuana or less, the AAO finds that he is statutorily ineligible to be considered for a section 212(h) waiver.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing the applicant's additional inadmissibilities, whether the applicant has established extreme hardship to his U.S. citizen wife and/or son, or whether he merits the waiver as a matter of discretion.

However, the AAO does note that the record indicates that applicant is also inadmissible under Section 212(a)(9)(B) of the Act for having been unlawfully present in the United States from April 1, 1997, the date the unlawful presence provisions were enacted, until October 13, 2006, the date of the applicant's removal from the United States. Moreover, the record also indicates that the applicant, having been convicted of numerous violent or dangerous crimes would be subjected to the heightened discretionary standard of 8 C.F.R. § 212.7(d). Finally, the record also seems to indicate that the applicant misrepresented his criminal record and/or immigrant intentions when applying for a nonimmigrant visa to the United States in 1991, entering the United States on this non-immigrant visa in 1991, and upon re-entering the United States on a nonimmigrant visa in 1996.

Again, in proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.