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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

H6

Date: JUN 20 2012 Office: ROME FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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 Humway

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Tunisia who was found to be inadmissible to the United States pursuant to 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 relating to a controlled substance. He was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking a benefit under the Act by willful misrepresentation, section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of his last departure, and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen fiancée and sons.

The field office director denied the Form I-601 application for a waiver, finding that there is no waiver available for the applicant's inadmissibility under section 212(a)(2)(A)(i)(II) of the Act. *Decision of the Field Office Director,* dated September 1, 2009.

On appeal, counsel for the applicant asserts that the applicant's conviction for possession of a controlled substance does not serve as a basis for inadmissibility under section 212(a)(2)(A)(i)(II) of the Act. *Statement from Counsel on Form I-290B*, dated September 30, 2009.

The record contains, but is not limited to: statements from counsel; documentation regarding the applicant's criminal convictions; and statements from the applicant's fiancée and others in support of the waiver application. The entire record was reviewed and considered in rendering this decision.

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

> 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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record shows that the applicant has been convicted of multiple criminal offenses, including possession of a controlled substance (alprazolam) pursuant to Pa. Cons. Stat. 35 § 780-113(a)(16) for his conduct on or about April 5, 1999. He also pled guilty to possession of marijuana under Pa. Cons. Stat. 35 § 780-113(a)(31)(i) and use or possession of drug paraphernalia pursuant to Pa. Cons. Stat. 35 § 780-113(a)(32) for his conduct on or about April 5, 1999. He was convicted of two counts of making false statements in an immigration application pursuant to 18 U.S.C. § 1546, conspiracy to defraud the United States under 18 U.S.C. § 371, and obstructing of an agency proceeding pursuant to 18 U.S.C. § 1505 on October 3, 1988. He was charged with simple assault, harassment, and recklessly endangering another person due to pushing a parking enforcement officer in Pennsylvania on or about January 22, 1991, for which he received six months of probation.

The field office director found that the applicant's conviction for possession of a controlled substance, alprazolam, renders him inadmissible under section 212(a)(2)(A)(i)(II) of the Act, and that there is no waiver available. On appeal, counsel asserts that the applicant's conviction under Pa. Cons. Stat. 35 § 780-113(a)(16) does not serve as a basis for inadmissibility under section 212(a)(2)(A)(i)(II) of the Act. Counsel contends that an illegible stamp over a charging document that was part of the applicant's criminal proceedings "may serve as a dismissal or withdrawal of the relevant charges." However, this speculative observation does not overcome records of the that show that the applicant entered a plea of guilty to the charge and he received a sentence of 12 months of probation and various costs.

Counsel contends that the applicant's criminal proceedings contained no instructions regarding the impact the charges may have on his immigration status. However, the applicant has not presented documentation or legal citations to show that the court had an obligation to provide such instructions, and he has presented no documentation to support that such instructions were not given. It is noted that challenging irregularities in the applicant's criminal proceedings is a matter within the jurisdiction of the courts, and the AAO lacks authority to overturn or disregard a criminal conviction. Counsel contends that the applicant is undertaking a process to request a pardon for his controlled substance offense. However, the applicant has not submitted any evidence to show that his conviction has been reconsidered by the court or overturned.

Based on the foregoing, the applicant's conviction under Pa. Cons. Stat. 35 § 780-113(a)(16) continues to render him inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

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 . . . .

The applicant's offense of possession of a controlled substance involved in his possession of alprazolam, a schedule IV controlled substance under Part B of 21 U.S.C. 802(6). As his conviction did not relate to a single offense of simple possession of 30 grams or less of marijuana, he is not eligible for

consideration for a waiver under section 212(h) of the Act. For this reason, the appeal must be dismissed.

Because the applicant is statutorily ineligible for a waiver of his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, no purpose would be served in determining whether he meets the requirements for a waiver under sections 212(a)(9)(B)(v), 212(h), and 212(i) of the Act, including discussing whether he has established extreme hardship to his fiancée or sons, or whether he merits a waiver as a matter of discretion.

In proceedings for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v), 212(h), and 212(i) of the Act, the burden of establishing eligibility 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.