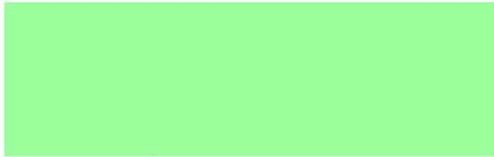


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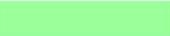


U.S. Citizenship
and Immigration
Services

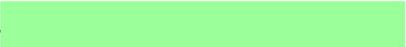


DATE: MAR 07 2013

Office: MEXICO CITY (PANAMA)

FILE: 

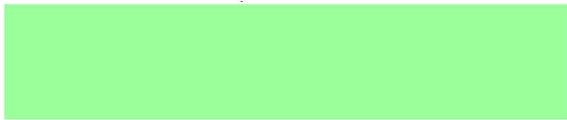
IN RE:

Applicant: 

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 Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A).

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed.

The applicant is a native and a citizen of Colombia who was found by the acting district director to be inadmissible to the United States pursuant to section 212(a)(2)(C) of the Immigration and Nationality Act (the 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; section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(3)(A)(ii), for seeking entry for unlawful activity; 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 section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been previously removed from the United States. The applicant is seeking a waiver in order to reside in the United States.

The acting district director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, and there are no waivers for inadmissibility under sections 212(a)(2)(C)(i) and 212(a)(3)(A)(ii) of the Act; and she denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Acting District Director's Decision*, dated June 30, 2008. The AAO found that the applicant is only inadmissible pursuant to section 212(a)(2)(C) of the Act, and there is no waiver available for this ground of inadmissibility. *AAO Decision*, dated March 9, 2011. The AAO dismissed the appeal accordingly. *Id.*

In the motion to reconsider, counsel asserts that the AAO misapplied the “reason to believe” standard of section 212(a)(2)(C)(i) of the Act and there is no reasonable, substantial and probative evidence to support a finding of section 212(a)(2)(C)(i) inadmissibility under *Garces v. U.S. Atty. Gen.*, 611 F.3d 1337 (11th Cir. 2010). *Brief in Support of Motion to Reconsider*, dated April 5, 2011.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Counsel has submitted a brief in support of the motion to reconsider.

Counsel states that the petitioner in *Garces* was caught up in a drug bust; he pled guilty to trafficking and aggravated assault; the record in the proceedings included sworn complaints/arrest affidavits; and the arrest reports and the petitioner’s testimony in immigration proceedings were in the record. *Id.* at 1339. Counsel states that the record did not contain any transcript or minutes from the plea proceedings; petitioner had his guilty plea vacated but was found inadmissible for reason to believe he engaged in drug trafficking and was ordered removed by the immigration judge; and the 11th Circuit relied on the Department of State standard that requires more than a mere suspicion to find a reason to believe. *Id.* at 1340-1341, 1346. Counsel states that the petitioner’s guilty plea carried

little or no probative weight as he did not make any factual admissions of guilt; the record did not specify whether the applicant admitted his guilt and entered a plea on that basis or maintained his innocence and entered a “plea of convenience” because it was in his best interest to do so; the petitioner’s plea of guilty did not corroborate the arrest report allegations; and arrest reports, absent corroboration by other evidence, do not offer reasonable, substantial, and probative evidence of reason to believe the petitioner was engaged in drug trafficking. *Id.* at 1347-1348, 1350.

Counsel asserts that the AAO relied on the indictment, superseding indictment, plea agreement, changes of plea, judgment, defendant’s objections to presentence investigation report and the U.S. responses to this report in its decision, but that none of these records are the type of corroborating evidence that the 11th Circuit would consider to offer reasonable, substantial, and probative evidence of reason to believe. Counsel argues that, following *Garces*, the U.S. response to the presentence investigation is not evidence against the applicant, rather it is the government position in the case. Counsel asserts that relying on the plea agreement would be speculation under *Garces*, as it is not clear why the applicant took the plea. Counsel further contends that the applicant was convicted of structuring to evade reporting requirements in violation of the law and all of his other charges were dropped. In sum, counsel argues that the AAO relied precisely on the type of evidence that the court in *Garces* found to be insufficient.

The court in *Garces* stated, “At issue in this case is whether the combination of a guilty plea leading to a conviction that was later vacated and some hearsay statements in police reports provides enough reason to believe that Garces trafficked in a controlled substance. Our conclusion is that it does not, at least not in the circumstances of this case.” *Id.* at 1339. The AAO notes that the court was looking at the specific facts of the case before it and did not determine that a guilty plea combined with police reports could never result in a finding of reason to believe that one is involved in drug trafficking. In addition, the documents relied on by the AAO are different than the ones considered in *Garces*, and the court did not exclude the type of evidence that the AAO relied on as being impermissible to use in “reason to believe” cases.

The court in *Garces* also stated: “Even if we assume the accuracy of the facts stated in the reports, they do not say much. They say that Garces “made contact with” Canevaro, but do not tell how. They also say that after Canevaro was caught with cocaine Garces tried to drive off when the undercover officers approached his car. But no drugs or drug paraphernalia were found on Garces or in his car, and he was not in the room when Canevaro handed the drugs to the undercover officer.” *Id.* at 1349. In *Garces*, the arrest reports provided little information about the case, whereas the documents relied upon by the AAO in this case are detailed and specific. The details were provided in the AAO’s initial decision.¹

¹ “The facts that were used to support the charges against the applicant are stated in the United States’ Response to the Defendant’s Motion to Suppress. Those facts are based on detailed observations made by an agent of the Internal Revenue Service and detectives of the Metro-Dade Police Department. The facts include the following: The back office of [REDACTED], where the applicant is the manager and sole employee, had a large amount of U.S. currency in bundles on top of a coffee table. U.S. Response Def. Mot. Suppress, 3 (Jan. 8, 1991). The applicant told Detective [REDACTED] that “approximately one hour earlier an individual named “[REDACTED]” had delivered the currency, which totaled

The court in *Garces* also gave little or no weight to the guilty plea and stated:

The record does not tell us whether Garces admitted his guilt and entered the plea on that basis or maintained his innocence and entered a “plea of convenience” because he was convinced it was in his best interest to do so. In fact, the record tells us nothing at all about what happened at the plea proceeding or in whatever negotiations led up to it.

Id. at 1348.

However, in the applicant’s case, the Change of Plea document, dated February 27, 1992, reflects that the court made an inquiry as to his guilt and “[t]he Court, being satisfied there was a factual basis for the plea, accepted the plea of guilty and found the defendant guilty as charged.” As such, the plea agreement was properly accorded probative weight by the AAO.

In view of relevant case law and based on the aforementioned agreements made by the applicant in the plea agreement and the foregoing facts in the United States’ Response to the Defendant’s Motion to Suppress, which specifically describe the applicant’s receipt of money from a co-defendant who was involved in narcotic money laundering activities; the applicant’s receipt of \$100,000 on April 20, 1990 from a special agent acting in an undercover capacity; and the

\$100,000 and was delivered to purchase computer equipment for an individual in Columbia.” U.S. Response Def. Mot. Suppress, 3. The applicant denied “that co-defendant [REDACTED]” adding that [REDACTED] had departed the premises.” U.S. Response Def. Mot. Suppress, 3. When asked how the applicant could complete a Form 8300 for the currency delivery from “[REDACTED]” without “[REDACTED]” identification, the applicant could not explain. U.S. Response Def. Mot. Suppress, 3. [REDACTED] denied any knowledge of the currency on the coffee table. U.S. Response Def. Mot. Suppress, 4. When asked for identification, [REDACTED] retrieved a briefcase that was empty except for his passport, keys, and papers reflecting narcotics and money laundering activities; and a search of his wallet revealed more keys and papers evidencing money laundering activities. U.S. Response Def. Mot. Suppress, 4. The applicant admitted to [REDACTED] that [REDACTED] and not “[REDACTED]” had delivered the currency, adding that he lied about “[REDACTED]” because he was nervous. U.S. Response Def. Mot. Suppress, 4-5. In his later deposition, the applicant changed his story and stated that he thought [REDACTED] U.S. Response Def. Mot. Suppress, 4, n.1. A narcotics detector dog alerted to the odor of cocaine on the money [REDACTED] had personally delivered to the applicant, and to an area which the applicant identified as covering a floor safe containing between \$30,000 and \$40,000 in currency. U.S. Response Def. Mot. Suppress, 5. A nearby desk had bank records reflecting multiple deposits of less than \$10,000 in currency, and an envelope containing photocopies of “cedulas.” U.S. Response Def. Mot. Suppress, 5. Searches of residences controlled by [REDACTED] revealed narcotics records and \$2.2 million in narcotics-derived currency. U.S. Response Def. Mot. Suppress, 7. A special agent, acting in an undercover capacity, delivered \$100,000 to the applicant on April 20, 1990 (as charged in Count IV of superseding indictment). U.S. Response Def. Mot. Suppress, 6, n.3. We observe that count IV of the superseding indictment charges the applicant with a § 1956 violation involving his receipt of \$100,000 in narcotics-derived U.S. currency on April 20, 1990.

In addition, we observe that the plea agreement conveys that the applicant agreed to plea guilty to structuring bank deposits for the purpose of evading the currency transaction reporting requirements; to cooperate with the Offices of the United States Attorney, the Drug Enforcement Administration, the Federal Bureau of Investigation, and the Internal Revenue Service; and to forfeit currency seized by the Internal Revenue Service at [REDACTED] and at the residences controlled by [REDACTED]” *AAO Decision*, at 7-8.

applicant's conviction for structuring bank deposits for the purpose of evading the currency transaction reporting requirements, the AAO affirms that there is reasonable, substantial, and probative evidence to support a reason to believe that the applicant is a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in a controlled substance. As such, the applicant is inadmissible under section 212(a)(2)(C)(i) of the Act.

The AAO notes that the acting district director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision as the Form I-601. An application for permission to reapply for admission may be denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964). As the applicant is inadmissible under section 212(a)(2)(C) of the Act, no purpose would be served in granting the applicant's Form I-212.

As the applicant has not established that the AAO's decision was incorrect based on the evidence of record at the time of the initial decision, the motion is dismissed.

ORDER: The motion is dismissed.