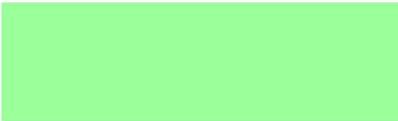


(b)(6)



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**

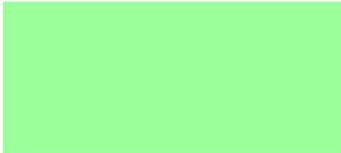


Date: **OCT 06 2014** Office: DENVER FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

for
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Denver, Colorado, denied the waiver application, and it 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 pursuant to section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present for more than 180 days but less than one year before voluntarily departing the United States. He is also inadmissible under section 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i), for having been an illicit trafficker in a controlled substance.¹ The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife and child.

The field office director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of Field Office Director*, June 19, 2013.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible under section 212(a)(9)(B)(i)(I) of the Act, as the applicable three-year bar has already expired, and alternatively claims that the applicant established that his departure would impose extreme hardship on a qualifying relative.

The record includes a brief and correspondence from counsel; financial documents; country condition information; birth certificates, legitimation evidence, and proof of marriage; documentation relating to the applicant's criminal conviction; and photographs. The entire record was reviewed and considered in rendering this decision.

The applicant claims to have entered the United States lawfully in 1991 with his parents, returned to Mexico in 1999 to visit relatives, and reentered without admission or parole in 1999 after his border crossing card was confiscated by immigration officials at the El Paso port of entry. He remained in the country until September 15, 2007, when he departed to attend his immigrant visa (IV) interview.² The record reflects that the applicant entered into a common law marriage on January 1, 2010 to the

¹ It is unclear whether the applicant is also inadmissible as a controlled substance violator under section 212(a)(2)(A)(i)(II), 8 U.S.C. § 1182(a)(2)(A)(i)(II), as the documentation on record does not establish whether he was "convicted" for immigration purposes where he appears to have entered a guilty plea in juvenile court proceedings. However, as our analysis of his inadmissibility for drug trafficking establishes a permanent bar, resolving the issue of a possible section 212(a)(2)(A)(i)(II) inadmissibility is unnecessary for having no bearing on the availability of a waiver.

² Having turned 18 years old on December 29, 2006, the applicant accrued unlawful presence from that date until his departure. The applicant states he reentered the country without admission or parole on October 29, 2009. It appears that this unlawful entry incurs inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, for unlawful reentry after more than one year of prior unlawful presence. As this section does not contain the exception for minors of section 212(a)(9)(B), under which only 10 months unlawful presence accrued, the applicant's aggregate unlawful presence from 1999 would exceed one year under section 212(a)(9)(C). However, we need not address this issue, as the applicant is permanently inadmissible under a different provision.

mother of his then 4½ year old child, and that his father became a naturalized U.S. citizen in December 1999. Immigration records show the applicant attended his consular IV interview on July 10, 2008. Counsel claims that the applicant has demonstrated the requisite extreme hardship to warrant a discretionary waiver of inadmissibility.

However, where the record reflects that the applicant is inadmissible as a controlled substance trafficker under section 212(a)(2)(C), for which there is no waiver, it would serve no purpose to determine whether he has established extreme hardship to a qualifying relative, since he would remain permanently inadmissible.

Section 212(a)(2)(C) of the Act provides, in pertinent part:

Any alien who the consular officer or the Attorney General knows or has reason to believe--

(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.

While the waiver denial addressed only the applicant's inadmissibility for unlawful presence, it is well-established that we have plenary power to review each appeal on a de novo basis. *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991) and *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Further, the applicant was refused an immigrant visa in 2008 after being found by a consular officer to be inadmissible under section 212(a)(2)(C)(i) of the Act as a controlled substance trafficker.

For an applicant 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 applicant 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 any such controlled, or endeavored to do so. Section 212(a)(2)(C) of the Act; *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9th Cir. 2000). In order for the officer to have sufficient "reason to believe" that an applicant has engaged in conduct rendering him inadmissible under section 212(a)(2)(C), 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)). In the present matter, the record contains reasonable, substantial, and probative evidence that the applicant sold cocaine.

The record establishes that the applicant pled guilty on August [REDACTED] in the District Court of [REDACTED] Colorado, to one count of possession of a controlled substance with intent to

distribute under Colorado Revised Statutes 18-18-405(1) and 18-18-405(2)(a)(I)(A), a class three felony.³ The applicant listed on his 2008 IV application, “Controlled Substance Schd II,” to explain his affirmative response to question 41 (“Have you ever been charged, arrested or convicted of any offense or crime?”). There is evidence he admitted at his 2008 IV interview overseas and at his 2013 adjustment interview in Colorado having pled guilty to selling cocaine. A criminal conviction is not required under section 212(a)(2)(C) of the Act, only the applicant’s admission or an immigration officer’s reason to believe a violation occurred. Although the applicant was not yet 18 at the time of his criminal act, there is no “minor exception” to this controlled substance ground of inadmissibility.

Based on the foregoing, there is sufficient reason to believe that the applicant has been an illicit trafficker in a controlled substance, and he is thus inadmissible under section 212(a)(2)(C)(i) of the Act. As there is no provision under the Act that allows for waiver of this inadmissibility, the appeal must be dismissed. Therefore, no purpose would be served in adjudicating whether he has met the requirements for a waiver under section 212(a)(9)(B)(v).

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. 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.

³ As it appears that the matter was handled as a juvenile delinquency case, the applicant’s plea may not have resulted in a formal conviction. However, as is the case here, an inadmissibility finding under the statute requires only a “reason to believe” the applicant engaged in illicit trafficking.