



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-N-B-C-

DATE: DEC. 11, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The Director, Nebraska Service Center, denied the application, and we dismissed a subsequent appeal. The matter is now before us on motion to reopen and motion to reconsider. The motion will be denied.

The Director found the Applicant to be inadmissible to the United States pursuant to section 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i), as an alien who the consular officer knows or has reason to believe is or has been an illicit trafficker in a controlled substance, and under 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. Concluding the Applicant had failed to establish that he was not a controlled substance trafficker and that there is no waiver for this ground of inadmissibility, the Director found no purpose would be served in determining whether the applicant was eligible for a waiver for his unlawful presence and, accordingly, denied the Form I-601. *Decision of Service Center Director*, June 17, 2014.

On appeal, the Applicant asserted that USCIS erred in concluding that he had been involved with illegal drugs, claimed that he was a visitor in a house raided by police, and contended he was improperly taken into custody. In support, he pointed out he was never charged with a crime. Noting that the Applicant had not met his burden of providing evidence to refute the drug trafficking finding, we dismissed the appeal. *Decision of the AAO*, March 19, 2015.

On motion, the Applicant claims that there is no "reason to believe" he was a controlled substance violator and, therefore, the permanent bar for drug trafficking does not apply. Stating that he has been unable to obtain a copy of a police arrest report that would support his position, the Applicant contends that he is not inadmissible for drug trafficking. He further asserts that he has established extreme hardship to his spouse and is eligible for a waiver under section 212(a)(9)(B)(v) of the Act for his unlawful presence. In support, the Applicant provides a brief and copies of correspondence showing his efforts to obtain police records. The entire record was reviewed and considered in rendering this decision.

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

(C) Controlled Substance Traffickers.-

Any alien who the consular officer or the Attorney General [the Secretary of Homeland Security] 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 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.

It is not disputed that the Applicant entered the United States without inspection and admission or parole in January 1995 and departed the country on November 10, 2010, under an order of voluntary departure and is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. However, the Applicant contends it was error to find him inadmissible as a controlled substance trafficker based on the circumstances surrounding his [REDACTED] 2009 arrest.

The Applicant asserts that he was visiting a house that was raided by police, resulting in his arrest, but he was not involved in drug trafficking taking place on the premises and was never charged with a crime. He further states that he has been unable to review the report on which the consular inadmissibility finding is based. Although the Applicant claims to have been unable to obtain a copy of the police report, the record shows that his counsel was able to have a copy of the report sent to the consular officer reviewing his visa application. The record indicates that, based on detailed information in the report, which states that the Applicant was found delivering drugs and was renting a room in a home where large quantities of drugs, weapons, and cash were found, the consular officer determined that the circumstances described established the “reason to believe” the Applicant was an illicit trafficker in a controlled substance or conspired in such trafficking. The Applicant offers no new evidence for his claim not to have been involved in drug-related activities occurring at the location where he was arrested.

Regarding the Applicant’s claim that it was error as a matter of law to find him inadmissible under section 212(a)(2)(C)(i) of the Act, we note that the Applicant bears the burden of establishing admissibility. Section 291 of the Act, 8 U.S.C. § 1361. Further, a foreign national must establish admissibility “clearly and beyond doubt.” *See* section 235(b)(2)(A) of the Act; *see also* section 240(c)(2)(A) of the Act. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

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The Applicant provides no documentation supporting his claim to have been a bystander or otherwise showing that the consular officer had no reason to believe he was involved in drug trafficking based on the information in his arrest report. On motion, counsel states that the police department will not release to him a copy of the police report. The record indicates that in response to the consular officer's request during the Applicant's October 2012 interview, his counsel arranged for a copy of the police report to be sent to the U.S. Consulate in [REDACTED] Mexico, but that the police declined to release the report to counsel. There is no evidence that the Applicant similarly requested that the police send a copy of the report directly to USCIS in support of the waiver application or appeal.

The Applicant has not submitted evidence to overcome the finding that he is inadmissible under section 212(a)(2)(C)(i) of the Act. As the Applicant has been found inadmissible under a provision for which no waiver is available, no purpose would be served in discussing whether he has established extreme hardship to a qualifying relative or is otherwise eligible for a waiver under section 212(a)(9)(B)(v) of the Act for having been unlawfully present in the United States for more than one year.

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, that burden has not been met.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-N-B-C-*, ID# 14152 (AAO Dec. 11, 2015)