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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAR 19 2015 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: APPLICANT:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the waiver application, which 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)(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. The applicant is the beneficiary of a spousal Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility in order to reside with his wife in the United States.

The director concluded the applicant had failed to establish that he was not a controlled substance trafficker under section 212(a)(2)(C)(i) of the Act and, as there is no waiver for this inadmissibility, found no purpose would be served in determining whether the applicant was entitled to a waiver under section 212(a)(9)(B)(v) of the Act for his unlawful presence. The director accordingly denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Service Center Director,* June 17, 2014.

On appeal, the applicant contends that USCIS erred in concluding that he had been involved with illegal drugs, asserts that he was a visitor in a house raided by police on or about October 10, 2010, contends he was improperly taken into custody along with others charged with drug offenses, and points out he was never charged with a crime. In support of his claim that he was never involved in illicit drug trafficking, the applicant provides no additional evidence beyond documentation submitted with the waiver application. The entire record was reviewed and considered in rendering this decision.

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.

In January 1995, the applicant entered the United States without inspection and admission or parole and departed the country on November 10, 2010, under an order of voluntary departure. It is undisputed he is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act and would

require a waiver to reenter the country before November 11, 2020. However, the applicant was also found inadmissible for reason to believe he is or was a controlled substance trafficker based on the circumstances surrounding his October 30, 2010 arrest. It is this inadmissibility finding that the applicant disputes as a matter of fact and of law.

The applicant asserts that he was not involved in drug trafficking but was a visitor in a house raided by police on or about October 10, 2010 and states he was never charged with a crime. The record shows that a consular officer, after reviewing a copy of the arrest report for this incident, determined the circumstances of the applicant's October 2010 arrest made him inadmissible under section 212(a)(2)(C)(i) of the Act and that statements of his counsel comprise the only information offered to refute the drug trafficking finding. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant provides no documentation supporting his claim to have been a bystander or showing that immigration officials had no reason to believe his presence indicated involvement in illegal, drug-related activity. Absent from the record on appeal is any police report, any written request from counsel for such a report, or written response denying such request. The Immigration and Nationality Act makes clear that 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. Further, 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. Comm. 1972)).

Having found the applicant statutorily ineligible for a waiver, no purpose would be served in discussing whether he has established extreme hardship to a qualifying relative or whether he merits a waiver as a matter of discretion. 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 appeal is dismissed.