U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-M-

DATE: AUG. 12, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant has applied for an immigrant visa and seeks a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v) and 1182(h).

The Director of the Nebraska Service Center denied the waiver request, finding the Applicant statutorily ineligible for having a controlled substance violation and for being an illicit trafficker in a controlled substance.

On appeal, the Applicant contests his inadmissibility for drug trafficking and contends that he is eligible for a section 212(h) waiver because his controlled substance violation related to simple possession of under 30 grams of marijuana. He also asserts that his lawful permanent resident parents and U.S. citizen spouse would experience extreme hardship because of his continued inadmissibility. He submits court documentation and immigration records in support.

Section 212(a)(2)(C)(i) of the Act renders inadmissible any foreign national who the consular officer or the Secretary of Homeland Security knows or has reason to believe 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.

The issue on appeal is whether the Applicant is eligible for a waiver. We conclude he is not and affirm the U.S. Department of State (DOS) decision that there is reason to believe the Applicant has been an illicit trafficker in a controlled substance. Therefore, he is inadmissible under section 212(a)(2)(C)(i) of the Act, for which there is no waiver available.

In order for the adjudicator to have sufficient "reason to believe" that an applicant has engaged in conduct that renders them inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by "reasonable, substantial, and probative evidence." *Matter of Rico*, 16 I&N Dec. 181, 185 (BIA 1977). A conviction or a guilty plea is not necessary to find a "reason to believe." *Castano*

v. INS, 956 F.2d 236, 238 (11th Cir. 1992); *Nunez-Payan v. INS*, 815 F.2d 384 (5th Cir. 1987); *Matter of Favela*, 16 I&N Dec. 753 (BIA 1979). "Indeed, reason to believe necessarily evokes a lower standard than the beyond a reasonable doubt required to obtain a criminal conviction." *Canvas v. Holder*, 737 F.3d 972, 975 (5th Cir. 2013).

The Director, in accordance with the finding by DOS, indicates that the Applicant's conviction for possession of marijuana with intent to sell or distribute under Florida Statutes (FS) section 893.13(1)(a) (which states in part that it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance), possession of drug paraphernalia under FS section 893.147(1), and the arrest affidavit, support the finding of inadmissibility. The arrest affidavit detailed how police found the Applicant in possession of marijuana and with a scale for weighing marijuana. The arrest affidavit also indicates the Applicant admitted to police officers that he sold marijuana to an individual a few weeks before his arrest.

We agree there is sufficient evidence to support the 212(a)(2)(C)(i) of the Act inadmissibility finding. Here, the reasonable, substantial, and probative evidence includes: 1) the information in the arrest warrant, wherein the Applicant admitted to selling marijuana, 2) the Applicant's free and voluntary plea of guilty to the FS section 893.13(1)(a) charge, and 3) a court's subsequent finding that the Applicant was guilty of possessing marijuana with the intent to sell or distribute beyond a reasonable doubt.

Moreover, because the Applicant is residing abroad and applying for an immigrant visa, DOS makes the final determination concerning eligibility for a visa. Thus, the Applicant is inadmissible under section 212(a)(2)(C)(i) of the Act because there is reason to believe he was an illicit trafficker of a controlled substance. There is no waiver available for applicants inadmissible under section 212(a)(2)(C)(i) of the Act. As such, we need not determine whether his other grounds of inadmissibility can or should be waived.

ORDER: The appeal is dismissed.

Cite as *Matter of R-M-*, ID 5427117 (AAO Aug. 12, 2019)