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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: MAY 16 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

MAY1603_05H2212

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and an appeal and subsequent motion to reconsider were dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion to reconsider. The motion will be granted and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving moral turpitude and for having been convicted of a crime relating to a controlled substance. The applicant is married to a citizen of the United States (U.S.). He has three U.S. born children and three U.S. born step-children. The applicant is the beneficiary of an approved petition for alien relative. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. 1182(h), in order to remain in the U.S. and adjust his status to that of a lawful permanent resident.

The district director concluded that due to the number, severity, and recency of the applicant's convictions, the applicant had failed to establish rehabilitation and denied the application accordingly. On appeal, the AAO affirmed the district director's decision and found that the applicant had failed to establish extreme hardship to a qualifying relative. In his first motion to reconsider, counsel asserted that the applicant was rehabilitated. Counsel additionally asserted that the AAO had assumed facts not in evidence and wrongfully applied precedent decision to the facts in the applicant's case.

In his second motion to reconsider, counsel asserts that the AAO abused its discretion by not finding rehabilitation or extreme hardship in the applicant's case and by using facts against the applicant that were not in the record. Counsel states that:

> Specifically, the Associate Director stated that the possession of cannabis which was under 30 grams or less and was never proven to be that of Mr. [redacted] [sic]. Furthermore, the February 27, 1989 arrest was [sic] no information and not filed. Mr. [redacted] denied the facts as given in this one sided/victim affidavit. Clearly, the story was fabricated.

See Appeal for Reconsideration, dated September 27, 2002. Counsel's assertions are unpersuasive.

It is noted that the district director and the AAO decisions erroneously indicate that the applicant was convicted of possession of cannabis, possession of drug paraphernalia, driving with a suspended or revoked license, and obstructing traffic/disabled vehicle, in the Circuit Court of Broward County, Florida, on **February** 27, 1989. In actuality, the evidence in the record reflects that the applicant was convicted of these crimes in the Circuit Court, Broward Country, Florida, on **December** 27, 1989. Nevertheless, this error is found to be harmless, as the convictions affect the applicant's case equally, regardless of whether they occurred in February or December of 1989.

Moreover, whether the applicant possessed more or less than 30 grams of cannabis is inconsequential in this case, as the applicant is ineligible for a waiver under section 212(h)(1)(A) of the Act because his convictions occurred less than 15 years ago. Additionally, the number and nature of the convictions and arrests contained in the record provide sufficient grounds for a discretionary finding that the applicant has not been rehabilitated.

Section 212(h) of the Act provides, in pertinent part, that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if -
>
> > (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that -
> >
> > > (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> > >
> > > (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> > >
> > > (iii) the alien has been rehabilitated; or

> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The applicant does not qualify for a waiver under section 212(h) of the Act. The applicant's convictions occurred less than 15 years before the date of his application for adjustment of status and the evidence in the record shows that he has not been rehabilitated. Additionally, no new evidence of hardship was presented in this motion to reconsider, and based on the reasoning set forth in the previous AAO decisions, the applicant failed to establish extreme hardship to a qualifying relative.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the order dismissing the appeal will be affirmed.

ORDER: The AAO order dismissing the appeal is affirmed.