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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI, FL Date: APR 05 2004

IN RE: [redacted]

PETITION: 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 PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. The applicant is married to a United States citizen and seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his spouse.

The acting district director concluded that the applicant violated a law relating to a controlled substance and was therefore inadmissible to the United States. *See* Decision of the Acting District Director, dated July 30, 2001.

On appeal, counsel asserts that the Immigration and Naturalization Service [Citizenship and Immigration Services] abused its discretion in denying the waiver as the applicant demonstrates extreme hardship to his spouse and family. *See* Form I-290B, undated.

The record reflects that on June 27, 1986, Ft. Lauderdale Police arrested the applicant on charges of Possession of Cocaine. The record further reflects that the applicant was not convicted of the crime.

Section 212(a)(2) of the Act states:

> (A)(i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
>
> (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.
>
> . . . .
>
> (C) Controlled substance traffickers. – Any alien who the consular officer or Attorney General [now Secretary of Homeland Security (Secretary)] knows or has reason to believe –
>
> (i) is or has been an illicit trafficker in any such 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 . . . substance . . . , or endeavored to do so . . . is inadmissible.

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

> The Attorney General [Secretary] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or 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 . . .

Counsel submits an offense report stating that after police officers arrested the applicant on June 27, 1986, he admitted that the black vial they recovered contained cocaine and belonged to the individual with whom the applicant was arrested. Further, the offense report indicates that subsequent to his arrest, officers recovered one cocaine rock from the applicant's upper left side shirt pocket and charged him with Possession of Cocaine. As noted by counsel, the applicant was not convicted of the offense. *See* Notice of Appeal and 601 Waiver, dated May 24, 2002.

An applicant may be found inadmissible under section 212(a)(2)(C) of the Act notwithstanding the dismissal of a criminal complaint against him if an immigration officer knows or has reason to believe that the applicant is or has been an illegal trafficker in drugs. *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977). Based on the record, the AAO finds that the applicant committed acts providing the Attorney General [Secretary] with reason to believe that he was a knowing aider, abettor, assister, conspirator, or colluder in the illicit trafficking of a controlled substance or endeavored to do so as provided under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C). The acting district director was, therefore, correct in finding that the applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act and further, is statutorily ineligible for relief as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h).

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his U.S. citizen wife and children or whether he merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.