U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H2

FILE: [redacted] Office: TAMPA, FLORIDA Date: DEC 16 2008

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The record reflects that the applicant is a forty-eight year old native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to enter and entering the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife in the United States.

The acting district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the Acting District Director*, dated April 4, 2006.

After a careful review of the record, the AAO finds that the applicant is inadmissible to the United States not only under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or misrepresentation, but also under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), as a controlled substance trafficker.

The record reflects that the applicant met his wife, [redacted] in June 1986 while working as a crewman on a passenger vessel. The applicant was admitted to the United States as a D-1 Crewman. On October 2, 1987, the applicant was arrested and charged with importing marijuana, possession of marijuana, and possession of marijuana with the intent to distribute. According to the record, the applicant's smuggling activities had been monitored for several months and the applicant was considered the "Smuggler Organizer" and "key person on the ship." *Report of Investigation*, dated October 5, 1987, at 3; *Tampa Police Department Auxiliary Report*, dated October 2, 1987, at 9, 12. The applicant was the person "who had the [drug] connection in Mexico," "hire[d] female smugglers to take the Mexican cruise," instructed them on how to meet the connection, and gave the money to the women to purchase the marijuana. *Tampa Police Department Auxiliary Report, supra*, at 9, 18; *Report of Investigation, supra*, at 1. In addition, after smuggling onto the cruise ship approximately fifteen pounds of marijuana, the applicant assisted three others in storing the marijuana in their cabins and instructed them on how to take it off the ship in order to avoid detection by Customs personnel. *Report of Investigation, supra*, at 2; *Criminal Report Affidavit signed by* [redacted]; *Tampa Police Department Auxiliary Report, supra,* at 18.

On November 5, 1987, the applicant's visa was revoked pursuant to section 252(b) of the Act, 8 U.S.C. § 1282 (b), and he was deported on December 20, 1987. On February 22, 1988, the State's Attorney's Office dropped all charges against the applicant after finding insufficient evidence to successfully prosecute the case. *Letter from* [redacted], dated February 22, 1988. However, the State's Attorney's Office concluded there was probable cause for the applicant's arrest. *Id.*

On November 8, 1989, the applicant attempted to enter the United States using a passport under the name [redacted]," but was unsuccessful and was returned to Jamaica. The applicant and Ms. [redacted] got married in Jamaica on January 11, 1990. [redacted]r filed an I-130 spousal petition on behalf of

the applicant, which was approved on November 9, 1991. The applicant subsequently entered the United States using a fraudulent passport on March 29, 1996.

Section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), provides, in pertinent part:

> Any alien who the consular officer or the Attorney General 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 802 of title 21), 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 . . . is inadmissible.

There is no waiver available for a section 212(a)(2)(C) ground of inadmissibility.

In this case, there is reason to believe the applicant is or has been an illicit marijuana trafficker, or, at a minimum, a knowing assister and conspirator with others in the illicit trafficking of marijuana. The record shows that six individuals, including the applicant, were arrested on October 2, 1987. *Report of Investigation, supra*, at 3-4. The applicant was arrested as the "Smuggler Organizer" and the other five individuals were arrested as "Couriers." *Id.* As described above, the record indicates that the applicant had the drug connection in Mexico, hired couriers to pick up the marijuana, provided the cash to purchase the marijuana, assisted in storing the marijuana on the cruise ship, and instructed others on how to get the marijuana off the cruise ship while avoiding detection. Based on this information, the applicant is inadmissible to the United States under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), as there is reason to believe he is or has been an illicit drug trafficker.

That the applicant was ultimately not prosecuted for this offense is irrelevant. The Board has long held that even though an applicant was not prosecuted on a drug charge, he may nonetheless be found to be inadmissible as a drug trafficker as long as there is "reason to believe" he is a drug trafficker. *Matter of R-H-*, 7 I&N Dec. 675 (BIA 1958) (finding alien excludable as a drug trafficker even though he was never convicted of any narcotic violations); *Matter of P-*, 5 I&N Dec. 190 (BIA 1953) (same). "It is well established that the laws relating to immigration are not criminal laws." *Matter of P-*, 5 I&N Dec. at 193. Indeed, the "reason to believe" standard set forth in section 212(a)(2)(C) of the Act was intended to eliminate loopholes and facilitate the deportation of undesirable aliens. *Matter of R-H-*, 7 I&N Dec. at 677.

A review of the documentation in the record indicates that the applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), as a controlled substance trafficker. Because there is no waiver available for a section 212(a)(2)(C) finding of inadmissibility, no purpose would be served in examining the applicant's eligibility for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.