



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 21 2015**

Office: RENO

FILE: 

IN RE:

Applicant: 

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:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Reno, Nevada, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico 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 controlled substance violation. The applicant is the son of a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his father.

The Acting Field Office Director found the applicant ineligible for adjustment of status based upon his inadmissibility related to his conviction related to controlled substances and indicated that he did not fall within the exception considerations under section 212(a)(2)(A)(ii) of the Act. The Acting Field Office Director also found that the applicant failed to establish that a bar to his admission to the United States would result in an extreme hardship to his qualifying relative, his lawful permanent resident father. The Acting Field Office Director denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Acting Field Office Director*, dated June 16, 2014.

On appeal, the applicant, through counsel, asserts that he has demonstrated extreme hardship to his qualifying relative, his father, and has also shown that he deserves a favorable exercise of discretion.

In support of the applicant's claim, the record includes, but is not limited to, briefs written on behalf of the applicant; medical documentation for the applicant's father; identification documents for the applicant and his father; letters and affidavits from the applicant, his father, his brother and friends; financial documentation; and criminal records for the applicant. The entire record was considered in rendering a decision on the appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 212(a)(2)(A)(i) of the Act states, in pertinent part:

(i) [A]ny 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 . . . is inadmissible.
- (II) a violation of (or a 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.

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

(h) The Attorney General [now Secretary of Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) 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 [Secretary] 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 [Secretary] 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 record reflects that the applicant pled guilty to possession of drug paraphernalia and unlawful possession on [REDACTED] 1996, in violation of the Nevada Revised Statutes (NRS) 453.554 and 453.336. The record establishes that the applicant was in possession of 6.3 grams of marijuana and was fined over \$500. The applicant does not contest that he is inadmissible for these convictions. However, he does assert that he is not ineligible for a waiver, and cites to *Matter of Martinez-Espinoza*, 25 I&N Dec. 118 (BIA 2009), to support his eligibility for a waiver.

In *Matter of Martinez-Espinoza*, the Board found that possession of drug paraphernalia in violation of section 152.092 of the Minnesota Statutes was a crime relating to a controlled substance. 25 I&N Dec. 118, 120 (BIA 2009). The Board noted that the phrase “relating to” has a broad meaning and concluded that “a law prohibiting the possession of an item intentionally used for manufacturing, using, testing, or enhancing the effect of a controlled substance necessarily pertains to a controlled substance.” *Id.* Therefore, the Board held that possession of “a pipe for smoking marijuana is a crime within the scope of [section 212(a)(2)(A)(i)(II)] because drug paraphernalia relates to the drug with which it is used.” *Id.* (quoting *Escobar Barraza v. Mukasey*, 519 F.3d 388, 391 (7th Cir. 2008); *cf. Matter of Davey*, 26 I&N Dec. 37, 38-39 (BIA 2012) (applying a “circumstance-specific” inquiry to section 237(a)(2)(B)(i) of the Act, 8 U.S.C. § 1227(a)(2)(B)(i), to find that convictions for two offenses - possession of marijuana and possession of drug paraphernalia - may be considered a “single” offense of possession).

A waiver is not available for inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, except for a single offense of simple possession of 30 grams or less of marijuana. Although the applicant was convicted of both possession of marijuana and possession or use of paraphernalia, as stated above, it is established that these convictions relate to the same criminal conduct for waiver purposes. *Matter of Martinez Espinoza*, 25 I&N Dec. 118, 124-25 (BIA 2009) (“criminal conduct bore such a close relationship to the simple possession of a minimal quantity of marijuana that it should be treated with the same degree of forbearance under the immigration laws as the simple possession offense itself.”).

Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a violation of a law relating to a controlled substance. The record does not indicate that his conviction relates to more than a single offense of simple possession of 30 grams or less of marijuana, so he is eligible for a waiver of that ground of inadmissibility.

The record reflects that the applicant also twice pled guilty to shoplifting on [REDACTED] 1992 and [REDACTED] 1993, in violation of Reno Municipal Code (RMC) 8.10.045. He was sentenced respectively to 30 hours of community service and a fine. As a result, we also note that the applicant may be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude. Nonetheless, as the applicant must satisfy the requirements of sections 212(h) of the Act for his controlled substance violation, it is unnecessary for us to address the applicant's potential inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(h)(1)(A) of the Act provides that the Secretary may, in his discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if 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. An application for admission or adjustment is a “continuing” application, and we determine waiver eligibility as of the date of our adjudication. *See Matter of Alarcon, supra*. Since the activities for which the alien is inadmissible occurred in 1993 and 1996, more than 15 years ago, they are waivable under section 212(h)(1)(A) of the Act.

Section 212(h)(1)(A)(ii) and (iii) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States; and that the applicant establish his rehabilitation. Evidence in the record to establish the applicant's eligibility under section 212(h)(1)(A)(ii) and (iii) of the Act consists of letters and affidavits from the applicant, his father, his brother and friends. This evidence establishes that the applicant lives with and cares for his elderly father, including cooking for him, cleaning their apartment and taking him to medical appointments. The record establishes that the applicant's brother currently financially assists their father, but that the applicant would like to contribute and assist his father financially as well, when he has permission to work. Several of the letters refer to the applicant's good character. The record lacks evidence that the applicant abuses controlled substances or that he has had any issues with shoplifting or other criminal activity. Given the passage of more than 15 years with no further criminal record, we find that the applicant has been rehabilitated and his admission is not contrary to the national welfare, safety, or security of the United States.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once waiver

eligibility is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. The AAO must “[b]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300 (citations omitted).

The adverse factors in the present case are the applicant's criminal convictions in 1992, 1993 and 1996. The favorable factors include the applicant's rehabilitation, his commitment to caring for his elderly lawful permanent resident father, and his good character. Although the applicant's criminal offenses were serious, we find that the applicant has shown that he is no longer involved in criminal activity, as he has had no arrests or convictions for nearly 20 years. When taken together, we find the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal is sustained, and the waiver application is approved.

ORDER: The appeal is sustained, and the waiver application is approved.