



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 23690351

Date: AUG. 3, 2022

Appeal of Philadelphia Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an adjustment of status and seeks a waiver of inadmissibility under Section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h).

The Director of the Philadelphia Field Office in Pennsylvania denied the application, noting the Applicant's inadmissibility as a controlled substance violator and concluding that the Applicant was not eligible for a waiver of inadmissibility. On motion to reopen, the Director affirmed the decision to deny the application. On appeal, the Petitioner asserts that the Director erred in denying the application.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This office reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Any noncitizen convicted of a violation of 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 to the United States. Section 212(a)(2)(A)(i)(II) of the Act. Under 21 U.S.C. § 802(6), "controlled substance" is defined as "a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter." Under schedule I, heroin is identified as a controlled substance. See 21 U.S.C. § 812(b)(1). An individual inadmissible under Section 212(a)(2)(A)(i)(II) of the Act because of a controlled substance violation may seek a discretionary waiver of inadmissibility under Section 212(h) of the Act, only if the violation related to a single offense of simple possession of 30 grams or less of marijuana.

II. ANALYSIS

The issue presented on appeal is whether the Applicant is inadmissible as a controlled substance violator, and if so, if he has established that he is statutorily eligible for a waiver under section 212(h)

of the Act. The record shows that in 1995, the Applicant was convicted in the United States District Court, Eastern District of Pennsylvania, of five crimes involving the conspiracy to distribute heroin and for his travel in interstate and foreign commerce to facilitate narcotics (heroin) trafficking. These were not crimes related to a single offense of simple possession of 30 grams or less of marijuana. As such, he is ineligible to seek a waiver under Section 212(h) of the Act, and he remains inadmissible to the United States under Section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a controlled substance offense.

On appeal, the Applicant provides statements in which he alleges that there were flaws in the federal court proceedings underlying his criminal drug trafficking convictions. However, we cannot go behind a conviction to assess an applicant's guilt or innocence. *See Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996). Unless the conviction was expunged or vacated because a court found a procedural or substantive defect in the underlying criminal proceeding, the conviction remains for immigration purposes. *See Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003). Here, the Applicant has not presented evidence that his drug trafficking convictions have been expunged or vacated.

We acknowledge that the Applicant has presented letters and other documents from family members and other individuals in support of his waiver application, attesting to his character and discussing in detail the hardships they endure based on his inadmissibility. While we recognize the negative impacts that his situation has had on him and his family, because he has heroin-related drug trafficking convictions, there is no waiver that he can seek to waive his inadmissibility under Section 212(a)(2)(A)(i)(II) of the Act. *See* section 212(h) of the Act.

III. CONCLUSION

Based on the foregoing we conclude that the Director did not err in denying the Applicant's Form I-601 waiver application. Accordingly, his Form I-601 waiver application remains denied.

ORDER: The appeal is dismissed.