U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19140384

Date: FEB. 3, 2022

Appeal of Hialeah, Florida Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident, 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 Hialeah, Florida Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant is not eligible for a waiver because she is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, for which no waiver exists. The matter is now before us on appeal.

On appeal, the Applicant disputes the determination that a non-waivable ground of inadmissibility applies. We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

Any individual convicted of, or who admits having committed, or who admits having committed acts which constitute the essential elements of, 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(a)(2)(A)(i)(II) of the Act.

Ordinarily, there is no waiver for a controlled substance violation, but section 212(a)(2)(h) of the Act permits a waiver if the violation relates to a single offense of simple possession of 30 grams or less of marijuana. USCIS may, in its discretion, grant such a waiver if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act.

The issue on appeal here is not the finding of inadmissibility, but rather the Applicant's eligibility for a waiver under section 212(h) of the Act. The Director concluded that the Applicant is not eligible for the waiver because she was "convicted of two drug offenses," specifically: (1) possession of 20 grams or less of cannabis, in violation of Florida Statute 893.13(6)(b); and (2) possession of drug paraphernalia, in violation of Florida Statute 893.147(1).

On appeal, the Petitioner cites *Matter of Martinez Espinoza*, 25 I&N Dec. 118 (BIA 2009),[1] in which the Board of Immigration Appeals (the Board) held that the "narrow language [of the statute] invites . . . a 'circumstance-specific' inquiry, that is, an inquiry into the nature of the conduct that caused the applicant to become inadmissible." *Id.* at 124-125. The Board further determined that the term "offense" used in section 212(h) of the Act "refer[s] to the specific unlawful acts that made the alien inadmissible, rather than to any generic crime." *Id.* at 124. The Board therefore Board concluded that "an [individual] who is inadmissible under section 212(a)(2)(A)(i)(II) of the Act may apply for a section 212(h) waiver if he [or she] demonstrates by a preponderance of the evidence that the conduct that made him [or her] inadmissible was either 'a single offense of simple possession of 30 grams or less of marijuana' or an act that 'relate[d] to' such an offense." *Id.* at 125.

In a case relating to the similarly-worded exception to deportability in section 237(a)(2)(B)(i) of the Act, 8 U.S.C. § 1227(a)(2)(B)(i), the Board determined the exception applies when an individual is convicted on multiple charges all arising from a single incident in which he or she possessed 30 grams or less of marijuana for his or her own use. *Matter of Davey*, 26 I&N Dec. 37, 39-41 (BIA 2012) ("We can conceive of no reason why Congress would exempt an alien from deportability for actually possessing a small amount of marijuana for personal use, yet deny such leniency simply because, for example, the marijuana was found in a baggie."). We apply the same reasoning here, given the similarity between the waiver provision in section 212(h) of the Act and the exception in section 237(a)(2)(B)(i) of the Act.

The record shows that both of the Applicant's [redacted] 2018 convictions arose from a single event. The [redacted] 2018 arrest report underlying both charges indicates that the Applicant was in an automobile that also contained "a glass jar with raw cannabis" and "a marijuana grinder" used to prepare the marijuana for smoking. The Applicant's conviction for possession of drug paraphernalia, the marijuana grinder, is directly connected to her conviction for possession of 20 grams or less of marijuana. Accordingly, she is eligible to apply for a waiver of her inadmissibility. The Director's decision to the contrary is withdrawn. We remand the matter for the Director to determine in the first instance if the Applicant has established extreme hardship to a qualifying relative and warrants the waiver as a matter of discretion, as required by section 212(h) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[1] *Abrogated on other grounds by Mellouli v. Lynch*, 135 S.Ct. 1980, 1981 (2015).