



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

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

In Re: 21482388

Date: AUG. 15, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), and under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). The Director of the Nebraska Service Center denied the Form I-601, Application to Waive Inadmissibility Grounds, concluding that the Applicant was statutorily ineligible for a waiver for a controlled substance violation that is not related to a single offense of simple possession of 30 grams or less of marijuana.<sup>1</sup>

The matter is now before us on appeal. On appeal, the Applicant asserts that the Director denied the Form I-601 based on an erroneous conclusion of law. He argues that he cannot be found inadmissible for his controlled substance violation because his case was dismissed and he submits a certificate for dismissal from the Superior Court of California, [REDACTED]. The Applicant further contends that the record demonstrates extreme hardship to his U.S. citizen parents and he merits a favorable exercise of discretion. We review the questions raised 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 dismiss the appeal.

Any foreign national 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) of the Act. Individuals found inadmissible under section 212(a)(2)(A) of the Act for a controlled substance violation related to a single offense of simple possession of 30 grams or less of marijuana may seek a discretionary waiver of inadmissibility under section 212(h) of the Act.

The issue on appeal is whether the Applicant is inadmissible for a controlled substance violation and, if so, whether he is eligible to apply for a discretionary waiver. The record supports the U.S. Department of State (DOS) finding that he is inadmissible for a controlled substance violation as it shows he was arrested in [REDACTED] 1999 in [REDACTED] California, and pleaded guilty to

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<sup>1</sup> The Director noted that a U.S. Department of State (DOS) consular officer found the Applicant inadmissible under sections 212(a)(2)(A)(i)(I) and (II) of the Act for having been convicted of crimes involving moral turpitude and a controlled substance violation, and under section 212(a)(9)(B)(i) of the Act for unlawful presence.

possession of narcotics/controlled substance – cocaine, in violation of California Health and Safety Code section 11350(a). The Applicant was ordered to complete a drug diversion program and upon completion, his case was dismissed in 2001 pursuant to California Penal Code section 1000. Though the Applicant’s case was dismissed following satisfactory completion of the drug diversion program requirements, the Applicant does not assert, and the record does not indicate, that his guilty plea was vacated or he has sought to vacate his guilty plea. Because the Applicant’s controlled substance violation is not related to a single offense of simple possession of 30 grams or less of marijuana, he may not seek a discretionary waiver of inadmissibility under section 212(h) of the Act.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. at 806. Here, he has not met that burden.

**ORDER:** The appeal is dismissed.