



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

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

In Re: 15797152

Date: AUG. 22, 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). The Director of the Nebraska Service Center denied the waiver request, noting that the Applicant was inadmissible for a controlled substance violation pursuant to section 212(a)(2)(C)(i) of the Act and concluding that no waiver was available.¹ On appeal, the Applicant contests his inadmissibility and contends that he has established his eligibility for a waiver. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. The Administrative Appeals Office reviews 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 for the entry of a new decision.

Section 212(a)(2)(C)(i) of the Act renders inadmissible any foreign national who the consular officer or the Secretary of Homeland Security knows or has reason to believe is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802).

On appeal, the Applicant acknowledges that he pled guilty to four counts of trafficking in contraband cigarettes and aiding and abetting and one count of conspiracy to introduce and deliver into interstate commerce misbranded drugs with intent to defraud and mislead. He refers to the Director's statement that his conviction record shows the offense involved alpha-pyrrolidinopentiophenone, "alpha-PVP," which is a controlled substance, and he argues that the Director erred in finding him inadmissible under section 212(a)(2)(C)(i) of the Act because his conduct occurred from 2008 to 2010 and 2012 to 2013, prior to alpha-PVP's January 2014 addition to the controlled substances schedules under 21 U.S.C. § 802. He further contends that the Director failed to meet the reason to believe standard under section 212(a)(2)(C)(i) of the Act and asserts that the statutory language is unconstitutionally vague as applied to his case.

Upon *de novo* review, the Applicant is not inadmissible under section 212(a)(2)(C)(i) of the Act because alpha-PVP was not added to the controlled substances schedules under 21 U.S.C. § 802 until

¹ The U.S. Department of State (DOS) also determined that the Applicant was inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for accumulating unlawful presence in the United States of one year or more.

January 2014, after the Applicant's criminal conduct and arrest. (*See Lopez Ventura v. Sessions*, 907 F.3d 306 (5th Cir. 2018) concluding that the application of section 212(a)(2)(A)(i)(II) of the Act was impermissibly retroactive in the case of a foreign national who pleaded guilty to possessing a substance that was added to the federal schedules of controlled substances after his arrest, but before his conviction. Though the instant case differs from *Lopez Ventura v. Sessions* in that the Applicant was found inadmissible under 212(a)(2)(C)(i) rather than 212(a)(2)(A), an inadmissibility finding under 212(a)(2)(C)(i) would also be impermissibly retroactive because the substance in question was added to the controlled substances schedules after the Applicant's criminal conduct and arrest, but before his 2015 conviction.)

In denying the waiver request, the Director did not make a determination regarding whether the Applicant established his eligibility for a waiver of his inadmissibility under section 212(a)(9)(B)(v) of the Act due to unlawful presence in the United States. This inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. Therefore, we find it appropriate to remand the matter for the Director to determine if the Applicant has established extreme hardship to a qualifying relative. If the Director finds the Applicant has established extreme hardship, then the Director must consider whether the Applicant merits a favorable exercise of discretion.

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