



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

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

In Re: 21343802

Date: SEPT. 07, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Australia, 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 Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant was statutorily eligible for a waiver because the Department of State (DOS) found him inadmissible under section 212(a)(2)(A)(i)(II) of the Act for being convicted of a controlled substance offense. The matter is now before us on appeal. 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 dismiss the appeal.

I. LAW

Any individual convicted of, 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. 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.

In these proceedings, it is the Applicant's burden 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).

Because the Applicant is residing abroad and applying for an immigrant visa, DOS makes the final determination concerning eligibility for a visa. Thus, as a result of the Consular Officer's finding of inadmissibility for section 212(a)(2)(A)(i)(II) of the Act, the Applicant requires a waiver under section 212(h) of the Act.

II. ANALYSIS

The record indicates that on [REDACTED] 2009, in the Magistrates Court of Western Australia, the Applicant was convicted for possessing a prohibited drug; records indicate that the controlled substance was MDMA. The Applicant received a spent sentence and was fined \$400.00. A determination of whether an applicant is inadmissible for a controlled substance violation requires a categorical inquiry into whether the law violated relates to a controlled substance on the schedules listed in section 802 of the Controlled Substances Act. *Mellouli v. Lynch*, 575 U.S. 798, 801, 805 (2015). MDMA is one of the listed chemicals in the Controlled Substances Act. Therefore, the Applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for being convicted of a controlled substance violation.

On appeal, the Applicant does not contest his inadmissibility. Instead, he argues that his conviction was a minor offense and occurred when he was 19 years old. He notes that he would have received a hefty jail sentence and a larger fine had he been convicted of an offense involving marijuana instead of MDMA. While that may be true, we can only consider the facts before us, in that the Applicant was convicted of a controlled substance violation involving MDMA. The Applicant further argues that he was misled by the Consular Officer who informed him that he was eligible for a waiver even while noting that his conviction involved MDMA. Although we acknowledge this argument and the hardships the Applicant has endured by pursuing the appellate process after receiving erroneous advice, we lack the authority to waive the requirements of any pertinent statute. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations hold “the force of law” and must be adhered to by government officials).

In the end, the Applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for a controlled substance violation, namely, MDMA. As the record establishes that the Applicant's conviction was not for a single offense of simple possession of 30 grams or less of marijuana, he is ineligible for a section 212(h) waiver of his inadmissibility. Accordingly, the waiver application remains denied.

ORDER: The appeal is dismissed.