



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

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

In Re: 25221168

Date: April 19, 2023

Appeal of Durham, NC Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant was found to be inadmissible for a conviction related to controlled substances under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II). The Applicant sought a waiver of inadmissibility.

In 2004, the Applicant pled guilty to conspiring to traffic in marijuana, maintaining a vehicle, dwelling, or place for controlled substances, and selling marijuana. In 2020, the court reduced her conviction to the following felonies: conspiring to possess with intent to manufacture, sell, or deliver marijuana and maintaining a vehicle, dwelling, or place for controlled substances.

The Durham, NC Field Office concluded that the Applicant was ineligible for a waiver because the Applicant's conviction involved is not related to a single offense of simple possession of 30 grams or less of marijuana under section 212(h) of the Act. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 dismiss the appeal.

We adopt and affirm the Director's decision. See *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); see also *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case); and, *Gandarillas-Zambrana v. BIA*, 44 F.3d 1251, 1255 (4th Cir.), cert. denied, 516 U.S. 806 (1995) (the Fourth Circuit recognizes that the Board of Immigration Appeals may adopt the findings and reasoning of the decision below).

Section 212(a)(2)(A)(ii)(II) of the Act renders inadmissible any noncitizen who is convicted of violating a law or regulation relating to a controlled substance. There is no waiver available for this inadmissibility unless the offense is related to a single offense of simple possession of 30 grams or

less of marijuana. Section 212(h) of the Act. See also Matter of Espinoza, 25 I&N Dec. 118, 125 (BIA 2009).

On appeal, the Applicant asks us to go behind the conviction and examine the circumstances behind the Applicant's plea:

Here, [] charges were filed on [] 2003 (over nineteen years ago) when she was seventeen years old. She pleaded guilty to a crime that she neither committed nor intended to commit and lacked a basic understanding of the legal procedure. The language barrier, a defense attorney that did not explain the consequences of her plea, and a prosecutor hard-set before any charges were filed amounted to this tragic result.

We cannot go behind a conviction to assess the Applicant's guilt or innocence, Matter of Madrigal-Calvo, 21 I&N Dec. 323, 327 (BIA 1996). Moreover, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Laureano, 19 I&N Dec. 1 (BIA 1983); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Because the Applicant's conviction is not related to a single offense of simple possession of 30 grams or less of marijuana, there is no waiver available for this admissibility.

We conclude that the Applicant's conviction makes her inadmissible and that there is no waiver available for this inadmissibility ground. Because the Applicant is statutorily ineligible for a waiver, we need not discuss whether she has established extreme hardship to a qualifying relative or merits a waiver as a matter of discretion. Therefore, the waiver application is denied.

ORDER: The appeal is dismissed.