



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

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

In Re: 28159060

Date: NOV. 6, 2023

Appeal of Nebraska Service Center Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Russia currently residing in that country, has applied for an immigrant visa. A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be “admissible” or receive a waiver of inadmissibility. The Applicant has been found inadmissible for a controlled substance violation, crime involving moral turpitude, and illicit trafficking in a controlled substance and seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h).

The Director of the Nebraska Service Center denied the application, concluding that the Applicant was inadmissible under section 212(a)(2)(C)(i) of the Act and that approval of the waiver under section 212(h) of the Act would serve no purpose. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant argues that her conviction in the Soviet Union was unjust and that she should be granted a discretionary waiver of inadmissibility.

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.

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), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so. There is no waiver available for this inadmissibility.

An individual may be deemed inadmissible under section 212(a)(2)(C)(i) of the Act even where there has been no admission and no conviction, so long as there is “reason to believe” they were involved in illicit trafficking of a controlled substance. *See Matter of Casillas-Topete*, 25 I&N Dec. 317, 321 (BIA 2010); *Matter of Favela*, 16 I&N Dec. 753, 756-57 (BIA 1979).

The record establishes that while working as a nurse in the Central Hospital for the city of the Applicant provided a narcotic substance, trimeperidine, to an individual who was not

authorized to receive such a substance. The Applicant was convicted under Article 17, 224-I part 2 of the criminal code of the Russian Soviet Federative Socialist Republic of providing 9 viles of timeperidine and 1 vile of papaveretum to a colleague for sale between February and April of 1985. The Applicant was sentenced to seven years in a labor camp but did not serve any time due to good behavior.

The Department of State determined that the Applicant's conviction rendered her inadmissible under sections 212(a)(2)(A)(i), (ii) and (C)(i) of the Act for a conviction of a crime involving moral turpitude, conviction for a controlled substance violation, and trafficking in an illicit controlled substance. In her statement to the Director, the Applicant asserted that she gave the narcotic to a colleague so she could give it to a patient who had recently had surgery. She stated that her motives were humanitarian due to the unavailability of medication at the time and not for personal gain. However, court records indicate that the Applicant procured and provided narcotics without authorization from a physician on at least ten occasions between February and April of 1985. The Director determined, among other things, that the waiver application should be denied as a matter of discretion because a waiver of the Applicant's inadmissibility under section 212(a)(2)(A)(i) of the Act would serve no purpose because she would remain inadmissible under sections 212(a)(2)(A)(ii) and (C)(i) of the Act.

On appeal, the Applicant concedes that there is no statutory waiver available for inadmissibility under section 212(a)(2)(C)(i) of the Act but requests a waiver in the exercise of discretion. The Applicant further asserts that she was not a trafficker in a controlled substance and did not dispute the charges against her out of fear of the Soviet state. Upon de novo review, the Applicant has not overcome the U.S. Department of State's finding of inadmissibility or established eligibility for a waiver. The U.S. Department of State makes the final determination concerning eligibility for a visa, including inadmissibility, for applicants residing abroad. As a result of the Consular Officer's finding of inadmissibility for illicit trafficking in a controlled substance, the Applicant is permanently inadmissible to the United States. Therefore, approval of the waiver under section 212(h) of the Act to cure inadmissibility under section 212(a)(2)(A)(i) of the Act would serve no purpose.

The Applicant claims that her conviction was due, in part, to her fear of being persecuted if she were to defend herself in court. Collateral attacks upon an applicant's conviction "do not operate to negate the finality of [the] conviction unless and until the conviction is overturned." *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996). The AAO "cannot go behind the judicial record to determine the guilt or innocence of the alien." *Id.* (citing *Matter of Fortis*, 14 I&N Dec. 576, 577 (BIA 1974); see also *Matter of Khalik*, 17 I&N Dec. 518, 519 (BIA 1980).

As the Applicant has not established that the requested waiver would render her admissible to the United States, we need not reach, and therefore reserve, the Applicant's argument's related to extreme hardship to her lawful permanent resident spouse and U.S. citizen daughter. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof). The waiver application will remain denied.

ORDER: The appeal is dismissed.