U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28102156

Date: NOV. 28, 2023

Appeal of Tampa, Florida Field Office Decision

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

The Applicant, a citizen of Colombia, has applied to adjust status to that of a lawful permanent resident (LPR). 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 was found to be inadmissible 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), for a controlled substance violation.

The Director of the Tampa, Florida Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant is not eligible for a waiver of inadmissibility because of a controlled substance violation not relating to simple possession of 30 grams or less of marijuana. 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.

Any individual convicted of, or who admits having committed, 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 2019, the Applicant pled guilty to criminal possession of a controlled substance in the third degree with the intent to sell under section 220.16 01 of the New York Penal Law. The Applicant submitted into the record court documentation indicating that law enforcement found a kilogram of cocaine in the vehicle the Applicant was driving. The Applicant does not contest these facts. Instead, on appeal, the Applicant asserts he had no choice but to plead guilty to avoid a lengthy jail sentence. Submitted with the waiver application is a letter from the Applicant's criminal defense attorney supporting the Applicant's claim that he only pled guilty to cooperate with the government and protect his family.

Although we acknowledge these assertions, 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). Because the Applicant's controlled substance conviction is not related to simple possession of 30 grams or less of marijuana, he is statutorily ineligible for a waiver of inadmissibility under section 212(h) of the Act.

ORDER: The appeal is dismissed.