U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28587946

Date: OCT. 31, 2023

Motion on Administrative Appeals Office Decision

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

The Applicant, a citizen of Mexico, applied to adjust status to that of a lawful permanent resident and 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 having been convicted of conspiring to possess with intent to manufacture, sell or deliver marijuana and maintaining a vehicle, dwelling, or place for controlled substances. The Applicant sought a waiver of inadmissibility under 212(h) of the Act.

The Director of the Raleigh Durham, North Carolina Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver), concluding that the Applicant did not establish that she is eligible for a waiver because she was convicted of a controlled substance offense and that conviction is not related to a single offense of simple possession of 30 grams or less of marijuana under section 212(h) of the Act. We dismissed the Applicant's subsequent appeal. The Applicant moves for reconsideration of that decision.

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). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our previous decision was based on an incorrect application of law or USCIS policy and that the decision was based on the evidence in the record of proceedings at the time of the decision. 8. C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the immigration benefit sought.

In our previous decision, incorporated here by reference, we determined that because 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, the Applicant is inadmissible. 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. As the Applicant was found to be in possession of more than 30 grams of marijuana, she is ineligible for relief under 212(h) and there is no waiver available.

On motion the Applicant reargues the issues we considered on appeal; she proffers a brief summarizing the decisions and laws previously submitted. However, to prevail in a motion to reconsider, the Applicant must demonstrate how we erred as a matter of law or policy in the prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (noting that "a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). The Applicant does not identify any specific error of law or policy in our prior decision and has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision.

ORDER: The motion to reconsider is dismissed.