



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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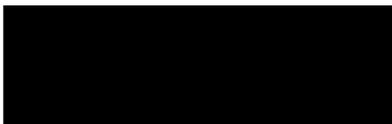
FILE [redacted] Office: Texas Service Center

Date: FEB 22 2001

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under § 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

identification data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who was removed from the United States on July 21, 1997, therefore he is inadmissible to the United States under § 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(ii). The applicant seeks permission to reapply for admission under § 212(a)(9)(A)(iii), 8 U.S.C. 1182(a)(9)(A)(iii), to rejoin his wife.

The record also contains a letter from the applicant's counsel in which he lists the applicant's 14 separate criminal convictions in Canada from 1974 to 1998 and 1 conviction in the United States in 1996. The list includes convictions for possession of an unnamed narcotic in 1974 and in 1992; 3 counts of theft in 1980; 1 count of theft in 1989; as well as robbery and the use of a firearm in 1980. The record fails to contain any dispositions of those convictions. The applicant's convictions also render him inadmissible under §§ 212(a)(2)(A)(i)(I) and (II) of the Act, 8 U.S.C. 1182(a)(2)(A)(i)(I) and (II), for having been convicted of a crime involving moral turpitude and for having been convicted of violating a law relating to a controlled substance.

Citing Matter of J-F-D-, 10 I&N Dec. 694 (Reg. Comm. 1963), and Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964), the director determined that the applicant is mandatorily inadmissible to the United States for having been convicted of violating a law relating to a controlled substance, and no waiver is available for such a conviction. The director then denied the application accordingly.

On appeal, counsel states that the director failed to consider any of the evidence regarding hardship to the applicant's wife or to the applicant's health.

Section 212(a)(9) of the Act, ALIENS PREVIOUSLY REMOVED, provides, in pertinent part, that:

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.-

(ii) OTHER ALIENS.-Any alien not described in clause (i) who-

(I) has been ordered removed under § 240 [1229a] or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or

within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) EXCEPTION.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(II) 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 § 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) WAIVER OF SUBSECTION (a)(2)(A)(i)(I), (II), (B), (D), AND (E).-The Attorney General may, in his discretion, waive application of subparagraph (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-....

The record reflects that the applicant is inadmissible to the United States under § 212(a)(2)(A)(i)(II) of the Act for having been convicted of violating a law relating to an unnamed controlled substance on two occasions. No waiver of such ground of inadmissibility is available, except for a single offense of simple possession of 30 grams or less of marijuana. Therefore, there is no need to consider evidence regarding hardship to the applicant's wife or the applicant's health when no waiver of that ground of inadmissibility is available. Further, a favorable exercise of discretion in this matter is not warranted.



In discretionary matters, the applicant bears the full burden of proof. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957); Matter of Ducret, 15 I&N Dec. 620 (BIA 1976). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.