



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Public Copy

H9

FILE:

Office: Rome

Date:

MAR 12 2001

IN RE: Applicant:

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:



Identification data deleted to prevent clearly unmerited invasion of personal privacy.

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

**DISCUSSION:** The application was denied by the Acting District Director, Rome, Italy, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Italy whose status was adjusted to that of lawful permanent resident on September 29, 1969. The applicant amassed a long history of arrests and convictions dating from 1977 to 1996 including multiple theft convictions and one conviction for possession of a controlled substance, cocaine. After leaving the United States, she was apprehended on October 9, 1996 attempting to enter the United States. The applicant was paroled in and placed in removal proceedings.

The applicant was found to be inadmissible to the United States under §§ 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II) and 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I), 1182(a)(2)(A)(i)(II) and 1182(a)(2)(B), for having been convicted of a crime involving moral turpitude, for having been convicted of a violation of a law relating to a controlled substance and for having been convicted of two or more crimes. The applicant was removed from the United States on May 13, 1998, therefore she is inadmissible under § 212(a)(9)(A)(i) of the Act, 8 U.S.C. 1182(a)(9)(A)(i). The applicant is the beneficiary of a petition for alien relative filed by her U.S. citizen daughter and she seeks permission to reapply for admission under § 212(a)(9)(A)(iii), 8 U.S.C. 1182(a)(9)(A)(iii), to rejoin her family.

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 acting district 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 acting district director then denied the application accordingly.

On appeal, the applicant states that the decision is in violation of her rights. The applicant's representative states that the applicant committed her crimes to maintain her substance abuse habit. The representative states that no court has been able to identify the substance she was convicted of possessing or the amount of that substance. The arrest record reflects that the applicant was arrested by the Rockville, Maryland, police on August 1, 1991 and charged with possession of cocaine. She was found guilty of that offense on October 11, 1991.

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

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.-

(i) ARRIVING ALIENS.-Any alien who has been ordered removed under § 235(b)(1) [1225] or at the end of proceedings under § 240 [1229a] initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or

within 20 years 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.

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

(I) has been ordered removed under § 240 of the Act 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-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, is inadmissible.

(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.

(B) MULTIPLE CRIMINAL CONVICTIONS.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the

offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 212(h) WAIVER OF SUBSECTION (a)(2)(A)(i)(I), (II), (B)...- The Attorney General may, in his discretion, waive application of subparagraph (A)(i)(I) and (B) 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....

The record reflects that the applicant was convicted of possession of cocaine.

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien convicted of violating a law relating to illicit trafficking, since he is mandatorily inadmissible to the United States under present §§ 212(a)(2)(A)(i)(II) or 212(a)(2)(C) of the Act, and no purpose would be served in granting the application.

The record reflects that the applicant is inadmissible to the United States under § 212(a)(2)(A)(i)(II) of the Act. 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, the 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.