

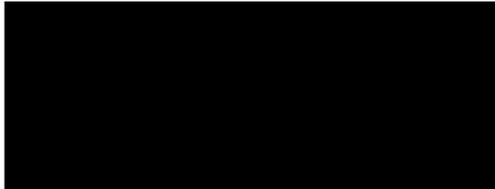


U.S. Department of Justice

Immigration and Naturalization Service

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

HA



FILE:



Office: Texas Service Center

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: Self-represented

Public Copy

INSTRUCTIONS:

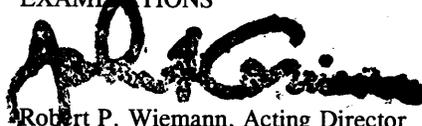
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 identity and 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 Peru who was admitted to the United States in September 1969 as a nonimmigrant visitor with authorization to remain until April 12, 1970. He failed to depart by that date or to obtain an extension of temporary stay. On June 4, 1970, an immigration judge found the applicant deportable and granted him until July 4, 1970 to depart voluntarily in lieu of removal. The applicant departed and on May 3, 1972 he was lawfully admitted for permanent residence. On October 30, 1986, the applicant was admitted to the United States as a returning resident alien.

On February 19, 1988, the applicant was convicted of (1) one count of Conspiracy to Possess with Intent to Distribute 5 Kilograms of Cocaine and (2) two counts of Aiding and Abetting the Possession with Intent to Distribute 4 Kilograms of Cocaine from September 5 to 8, 1987 (aggravated felonies) in violation of 21 U.S.C. 841(a)(1), 841(b)(1)(B), 846 and 18 U.S.C. 2; therefore he is inadmissible under §§ 212(a)(2)(A)(i)(II) and 212(a)(2)(C), for having been convicted of a violation of a law relating to a controlled substance and for being an alien who the consular or immigration officer knows has been an illicit trafficker in a controlled substance. He was sentenced to serve up to 10 years imprisonment on charge number one and up to 5 years imprisonment on charges number two, the sentences to be served concurrently.

On August 19, 1993, he was ordered deported from the United States by an immigration judge. That decision was affirmed by the Board of Immigration Appeals on October 27, 1993. He was removed from the United States on November 16, 1993; therefore he is inadmissible 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 into the United States under § 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii), to rejoin his family in the United States.

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, the applicant's daughter, a naturalized U.S. citizen, emphasizes the several family members that the applicant has in the United States and that they need and miss him.

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.

(C) CONTROLLED SUBSTANCE TRAFFICKERS.-Any alien who the consular or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, 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-....

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) and 212(a)(2)(C) 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.