



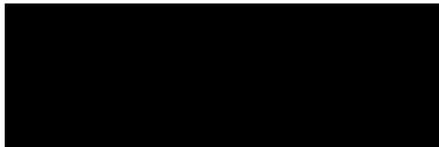
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U.S. Department of Justice

Immigration and Naturalization Service

**PUBLIC COPY**

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



FILE: [redacted] Office: California Service Center Date:

IN RE: Applicant: [redacted]

**FEB 28 2003**

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 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

**Identifying data deleted to  
prevent unwarranted  
invasion of personal privacy**

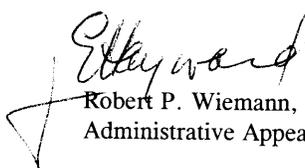
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was lawfully admitted for permanent residence on September 23, 1977. On November 27, 1991, the applicant was convicted of the offense of Possession of a Controlled Substance (Heroin). He was granted three years summary probation, committed to 120 days in an adult institution and fined. He was ordered deported by an immigration judge under former section 241(a)(2)(B)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1251(a)(2)(B)(1), for having been convicted of a law relating to a controlled substance. The applicant was removed to Mexico on January 21, 1992. Therefore, he is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant seeks permission to reapply for admission under section 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii).

The director determined that, although it appears that the applicant has remained outside the United States for more than 10 years and an Application for Permission to Reapply is not required, he 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 states that he never had an opportunity to defend himself and attaches an explanation of his case and how things really happened.

In *Matter of Khalik*, 17 I&N Dec. 518 (BIA 1980), the Board of Immigration Appeals (the Board) held that the Service cannot go behind the judicial record to determine the guilt or innocence of an alien for a criminal offense. A record of conviction constitutes a conviction for immigration purposes. The applicant can only appeal such a conviction within the court system.

The applicant is mandatorily inadmissible to the United States for having been convicted of a violation for which no waiver is available. Therefore, even though the applicant has remained outside the United States for more than 10 years, his application for permission to reapply for admission to the United States cannot be granted. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.