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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



JUL 02 2003

FILE

Office: California Service Center

Date:

IN RE: Applicant:

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)

ON BEHALF OF APPLICANT: Self-represented

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 Bureau of Citizenship and Immigration Services (Bureau) 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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was lawfully admitted for permanent residence on April 4, 1964. The applicant was convicted of numerous crimes including 2nd Degree Burglary, Petty Theft and Theft for which he served more than five years in the aggregate. Therefore, he is inadmissible under sections 212(a)(2)(A)(i) and 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i) and 1182(a)(2)(B), for having been convicted of a crime involving moral turpitude and for having been convicted of multiple crimes. The applicant's convictions also constitute an "aggravated felony" as that term is defined in section 101(a)(43)(G), 8 U.S.C. § 1101(a)(43)(G), as he was convicted of theft for which the term of imprisonment was at least one year.

The applicant was deported from the United States on January 4, 1995, and seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The director determined that, as a former lawful permanent resident, the applicant is ineligible for a waiver of the ground of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h) and denied the application accordingly.

On appeal, the applicant requests that he be granted permission to reapply to rejoin his family. He states that he did wrong and is repentant.

Section 212(h) of the Act provides, in part, that:-The Attorney General [now Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I),...or subsection (a)(2) and subparagraphs (A)(i)(II) and (B) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien;...and

(2) the Attorney General in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status. No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

In *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964), it was held that an application for permission to reapply for admission is denied, in the exercise of discretion, since the alien is mandatorily inadmissible to the United States, and no waiver is available. Therefore, no purpose would be served in granting the application.

Section 212(h)(2)(B)(2) of the Act provides that no waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if. . .since the date of such admission the alien has been convicted of an aggravated felony.

The applicant was convicted of an aggravated felony when he was a lawful permanent resident. Therefore, following *Martinez-Torres*, no purpose would be served in granting the application. The appeal will be dismissed.

ORDER: The appeal is dismissed.