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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

[redacted]

FILE [redacted] Office: California Service Center Date: JUN 10 2003

IN RE: Applicant: [redacted]

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 Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was present in the United States without a lawful admission or parole on November 4, 1987. On December 1, 1990, his status was adjusted to that of lawful permanent resident. On November 1, 1999, the applicant was convicted of the offense of Importation of Marijuana (242.10 pounds) in violation of 21 U.S.C. §§ 952, 960 (an aggravated felony), and he was sentenced to one year in jail. On May 2, 2000, he was served with a Notice to Appear. On May 12, 2000, an immigration judge found the applicant removable under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(A)(iii), for having been convicted of an aggravated felony. The immigration judge ordered the applicant removed from the United States, and he was removed to Mexico on May 12, 2000. Therefore, he is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having been removed from the United States. The applicant seeks permission to reapply for admission under section 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii), to rejoin his 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 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 inquires about the progress of his appeal and hopes that the decision will be favorable for his family.

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

> (ii) Any alien not described in clause (i) who-
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> > (I) has been ordered removed under section 240 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) 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 [now

> Secretary of Homeland Security] has consented to the alien's reapplying for admission.

Section 212(a)(2)(A) of the Act provides, in pertinent part, that:

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

Section 212(h) of the Act provides that the Attorney General [now Secretary of Homeland Security] may, in his discretion, waive application of subparagraph (A)(i)(I), (B), (D), and (E) or 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.

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 sections 212(a)(2)(A)(i)(II) 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 section 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. The applicant was convicted of importing 242 pounds of marijuana and is not eligible for this waiver. Therefore, the favorable exercise of discretion in this matter is not warranted.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish the warranting of a favorable exercise of the Attorney General's discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.