



U.S. Citizenship  
and Immigration  
Services

44

[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, ARIZONA

Date:

AUG 26 2004

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The application for permission to reapply for admission after deportation or removal was denied by the Interim District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who on September 17, 1992, was ordered deported from the United States by an Immigration Judge. The applicant filed an appeal with the Board of Immigration Appeals (BIA) that was dismissed on March 30, 1993. On April 22, 1993, a Warrant of Deportation was issued and on April 23, 1993, the applicant was deported from the United States at the Nogales, Arizona port of entry. The record reflects that the applicant reentered the United States on an unknown date without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326. The applicant is inadmissible under section 212(a)(9)(A)(ii) the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He 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) in order to remain in the United States.

The Interim District Director determined that section 212(a)(2)(a)(i)(II) of the Act applies in this matter and the applicant is not eligible and may not apply for any relief under the Act and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. See *Interim District Director's Decision* dated October 29, 2003.

On appeal, counsel asserts that the Interim District Director abused his discretion in denying the application and that the Interim District Director did not weigh the favorable and unfavorable facts in this case. In addition counsel states that the Interim District Director never informed the applicant that he was inadmissible under section 212(a)(2)(A)(i)(I) of the Act, nor did he request documentation from the applicant in order to support a waiver under 212(h) of the Act.

Before the AAO can weigh the favorable versus and unfavorable factors in this case, this office must first determine if the applicant can benefit from a waiver of inadmissibility due to his convictions of a controlled substance.

In his decision the Interim District Director states that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act because he was found guilty of possession of marijuana in violation of Arizona Revised Statutes sections 13-3405A1 and 13-702H no waiver is available. Additionally the record of proceedings further reveals that on July 23, 1987, the applicant was found guilty of possession of marijuana and was sentenced to a fine. Based on his convictions the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II).

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

(A)(i) [A]ny 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, or

(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, in pertinent part, that:

(h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (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-

. . . .

(1) (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 [Secretary] 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 . . . .

As stated above, section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(II) of the Act is available insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana. As mentioned above the record of proceedings reveals that the applicant was convicted twice for possession of marijuana and therefore he does not qualify under this exception. No waiver of the ground of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act is available to an alien

*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 who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

No purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.