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U.S. Citizenship  
and Immigration  
Services



H4

DEC 07 2004

FILE:  Office: CALIFORNIA SERVICE CENTER Date:  
WAC-04-043-51951

IN RE: Applicant: 

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



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

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The Director's decision will be withdrawn and the matter remanded to him for further consideration and action.

The applicant is a native and citizen of Peru. The Director states in his decision that on November 11, 1974, the applicant was convicted in the United States District Court, San Diego, California for illegal importation of a controlled substance; to wit: cocaine in violation of Title 21 U.S.C. section 952, 960 and 963. He further states that the applicant was granted lawful permanent resident status on January 23, 1969, and that on August 28, 1976, he was deported from the United States pursuant to section 237(a)(2)(B)(i) of the Immigration and Nationality Act (the Act) for having been convicted of a violation of any law or regulation relating to a controlled substance. The applicant is inadmissible to the United States because he falls within the purview of sections 212(a)(2)(A)(i)(II) and 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II) and 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant 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 apply for nonimmigrant visa and travel to the United States to visit his U.S. citizen mother and sister.

The Director determined that the applicant is not eligible for any relief or benefit from this application and denied the Application for Permission to Reapply After Deportation (Form I-212) accordingly. See *Director's Decision* dated April 6, 2004.

On appeal, counsel states that the Director erred in denying the Form I-212 filed by the applicant and he will be submitted a brief and/or evidence to the AAO within 30 days. The appeal was filed on May 4, 2004, and to this date more than six months later no additional documentation has been provided to the AAO.

A review of the record of proceedings does not reflect any documentation to substantiate the Director's finding of the applicant's conviction of a violation of any law or regulation relating to a controlled substance. Absent supporting documentation, the AAO is unable to confirm the Director's conclusion that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act or that he has been convicted of an aggravated felony.

The CIS Operation Instructions in 103.3(C) provide, in part, that the record of proceeding must contain all evidence used in making the decision. Without the complete record of proceeding and documentary evidence of the applicant's criminal record the AAO cannot make a decision on the appeal.

In view of the foregoing, the application will be remanded to the Director for further action. After preparing a proper record of proceedings the documentation shall be resubmitted to the AAO for review.

**ORDER:** The matter is remanded to the Director for further action consistent with the foregoing discussion.