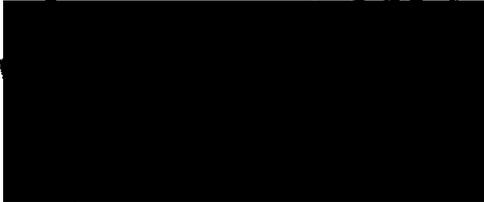


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114

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 25 2005**

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 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 into the United States after Deportation or Removal was denied by the Director, California Service Center, 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 October 21, 2002, was convicted in the Superior Court of California, County of Riverside, of the offense of possession of a controlled substance to wit: methamphetamine. In addition, on May 2, 1995, in the Superior Court of California, County of Riverside, the applicant was convicted of the offense of carrying a loaded firearm in a public place. On February 19, 2003, an Immigration Judge ordered the applicant removed to Mexico. Consequently, on February 20, 2003, the applicant was removed from the United States pursuant to section 237(a)(2)(C) of the Immigration and Nationality Act (the Act), for having been convicted at any time after admission for possession of a firearm and section 237(a)(2)(B)(i) of 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 travel to the United States and reside with his U.S. citizen spouse and children.

The Director determined that the applicant is inadmissible under sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act and he not eligible for any exception or waiver under the Act and denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. See *Director's Decision* dated October 14, 2004.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

....

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law . . . [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) Exception.-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 contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On appeal the applicant states that he became a lawful permanent resident in 1985, working in the United States for the next 17 years until he lost his job, and due to depression he started using drugs. In addition the applicant states that his spouse needs his moral and financial support because she has been diagnosed with

breast cancer and is being treated with chemotherapy. Furthermore he states that he does not use drugs any longer and requests that the application be granted so he can be reunited with his family in the United States.

The record of proceedings in the present case does not reveal specific details as to the amount of methamphetamine discovered in the applicant's possession. The AAO finds that the information in the record of proceedings does not support a finding of inadmissibility under section 212(a)(2)(C) of the Act, as being an illicit trafficker. Nevertheless, this office finds that the applicant is clearly inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a violation of any law or regulation relating to a controlled substance.

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-

. . . .

(II) a violation of (or a conspiracy or attempt to violate) any law or regulations 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.

No waiver of the ground of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act is available to an alien found inadmissible under this section except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception.

*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.