

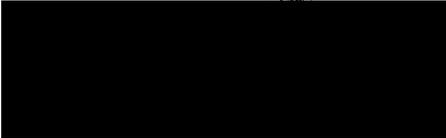
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship and Immigration Services



H4

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 22 2005

IN RE: Applicant: [Redacted]

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: 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 after 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 entered the United States on or about December 10, 1975. An Order to Show Cause was served on the applicant on July 28, 1976, and he was released on a \$5,000 bond. On April 12, 1976, in the United States District Court for the District of Arizona the applicant was convicted of the offense of possession with intent to distribute heroin and aide and abet. The applicant was sentenced to eight (8) years imprisonment. On October 14, 1976, an Immigration Judge ordered the applicant deported from the United States. Subsequently the applicant was deported from the United States on December 9, 1977. The applicant is inadmissible to the United States because he falls within the purview of sections 212(a)(2)(A)(i)(II), 212(a)(2)(C) and 212(a)(9)(A)(ii) Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), 8 U.S.C. § 1182(a)(2)(C) and 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant is the beneficiary of a Petition for Alien Relative (Form I-130) filed by his U.S. citizen sibling. 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 travel to the United States and reside with his family.

The Director determined that the applicant is 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 20, 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, or
- (II) departed the United States while an order of removal was outstanding, and 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the aliens' reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar, with limited exceptions, to admissibility for aliens who are unlawfully

present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal the applicant states that since his deportation and after finishing his sentence in Mexico he has dedicated his life to work with honesty and dedicated himself to his family and children. In addition he states that he has become a successful businessman and requests that his application be granted so he and his family would be able to immigrate to the United States for a better life. Furthermore the applicant states that although he was convicted he did not own the controlled substance for which he was convicted and that an individual who testified against him was paid to do so.

This office does not have jurisdiction over the applicant's conviction and sentencing. The fact remains that the applicant was convicted of the offense of possession with intent to distribute heroin and aide and abet. Based on the applicant's conviction he is inadmissible to the United States under sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act.

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.

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

(C) Controlled substance traffickers.-

any aliens who the consular officer of the Attorney General knows or has reasons to believe-

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (ad defined is section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with other in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so.....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. In addition there is no waiver available under section 212(a)(2)(C) of the Act.

*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.