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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

FEB 01 2006

IN RE:

Applicant:



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 (Form I-212) 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 August 3, 1998, was convicted in the Superior Court of the State of California in and for the County of Santa Clara, of the offenses of manufacture of a controlled substance to wit: methamphetamine in violation of section 11379.6(A) of the Health and Safety Code (HSC) of the State of California, and possession of a controlled substance to wit: methamphetamine in violation of section 11377(A) of the HSC. In addition, on July 20, 1998 the applicant was convicted of the offense of assault with a deadly weapon in violation of section 245(A)(i) of the penal code of California. Consequently, on July 25, 2000, the applicant was removed from the United States pursuant to 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 at any time after admission. The record reveals that the applicant reentered the United States in November 2000, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and 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 and reside with his U.S. citizen children.

The Director determined that the applicant is inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a violation of any law or regulation relating to a controlled substance; 212(a)(2)(C), 8 U.S.C. § 1182(a)(2)(C) for having reasonable grounds to believe that he was involved in the illicit trafficking of a controlled substance; 212(a)(9)(B), 8 U.S.C. § 1182(a)(9)(B), for having been unlawfully present in the United States for a period of one year or more; and 212(a)(9)(C)(i)(II), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for illegally reentering after being removed. The Director concluded that the applicant is not eligible for any exception or waiver under the Act. Furthermore, the Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director denied the applicant's Form I-212 accordingly. *See Director's Decision* dated August 11, 2005.

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's fiancée requests 60 days to submit a brief and/or evidence to the AAO. The applicant's fiancée states that she needs the additional time in order to retain an attorney, obtain current medical records and information from Mexico regarding health care and to obtain documentation regarding hardship to the applicant's children. The appeal was filed on September 13, 2005, and to this date, approximately five months later, no documentation has been received, and therefore, the AAO will adjudicate the appeal based on the documentation within the record of proceeding.

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 (as defined in 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 others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so.....is inadmissible.

The record of proceedings reveals that the applicant has a long history of criminal convictions that includes convictions of crimes involving moral turpitude and convictions relating to controlled substances. Based on the applicant's drug related convictions he is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act. In addition, his conviction for manufacture of a controlled substance gives reason to believe that the applicant is an illicit trafficker of a controlled substance, and therefore, inadmissible pursuant to section 212(a)(2)(C) of the Act.

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.