

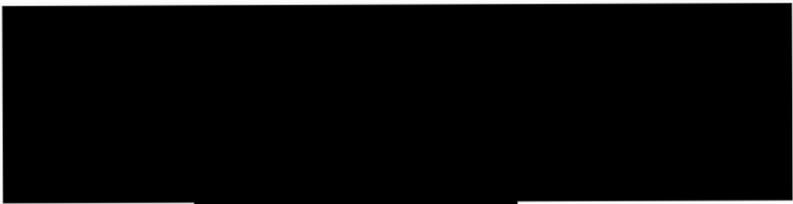
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U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 31 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, Vermont 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 Jamaica who on July 18, 1972, was granted Lawful Permanent Resident (LPR) status. On June 21, 1985, in the Supreme Court of Queens, County of Queens, State of New York, the applicant was convicted of the offense of attempted criminal sale of marijuana in the fourth degree. In addition, on April 9, 1986 in Supreme Court of Queens, County of Queens, State of New York, he was convicted of criminal possession of a weapon in the second and third degree and reckless endangerment in the first degree. On November 15, 1991, the applicant was served with an Order to Show Cause (OSC) for a hearing before an immigration judge. On March 25, 1997, an immigration judge ordered the applicant deported from the United States pursuant to sections 237(a)(2)(C)¹ of the Immigration and Nationality Act (the Act), for having been convicted at any time after admission of possession of a firearm, and 237(a)(2)(B)(i)² of the Act, for having been convicted of a violation of any law or regulation relating to a controlled substance. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was rejected as untimely filed on June 22, 1998. The applicant failed to surrender for removal or depart from the United States and a Warrant of Deportation (Form I-205) was issued on July 27, 1998. Consequently, the applicant was apprehended and removed from the United States on June 6, 2003. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of 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 travel to the United States and reside with his family.

The Director determined that the applicant is not eligible for any exceptions or waivers under the Act because he had been convicted of an aggravated felony and drug related crimes and denied the Form I-212 accordingly. *See Director's Decision* dated December 8, 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

¹ Formerly section 241(a)(2)(C) of the Act

² Formerly section 241(a)(11) of the Act.

Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On appeal, the applicant's mother states that she believes that the applicant did not know the law and carried a gun for his protection, because his brother was killed on December 12, 1998. The applicant's mother requests that the applicant be permitted to return to the United States. Finally, the applicant's mother requests that the applicant's attorney be contacted.

The AAO notes that the record or proceedings does not contain a Notice of Entry of Appearance as Attorney or Representative (Form G-28) filed on behalf of the applicant. Therefore, the AAO will not be sending a copy of the decision to the attorney mentioned on appeal by the applicant's mother.

As noted above, the applicant was convicted on April 9, 1986, of criminal possession of a weapon, years before his brother was killed. In addition, he was convicted of attempted criminal sale of marijuana and, therefore, he is inadmissible to the United States, pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) 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-

(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 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