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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



H4

FILE:

Office: MIAMI, FLORIDA

Date:

SEP 12 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.

A handwritten signature in cursive script, appearing to read "James A. Wiemann" with a flourish below it.

Robert P. Wiemann, Chief  
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 District Director, Miami Florida, 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 was admitted into the United States as a Lawful Permanent Resident (LPR) on February 8, 1970. On January 28, 1987, in the United States District Court for the Middle District of Florida, Orlando Division, the applicant was convicted for knowingly and willfully combining, conspiring, confederating and agreeing with others to possess with the intent to distribute a quantity of marijuana in excess of 50 kilograms, and was sentenced to five years imprisonment and a fine of \$10,000. In addition, on the same date he was convicted of possession and adding abetting in the possession with intent to distribute approximately 10,000 lbs, of marijuana. He was sentenced to five years imprisonment to run consecutively to his first sentence. On November 23, 1987, an Order to Show Cause (OSC) for a hearing before an immigration judge was issued. On May 11, 1990, the applicant was released on a \$25,000 bond. On June 4, 1990, the applicant failed to appear for a deportation hearing and he was subsequently ordered deported in absentia by an immigration judge pursuant to section 241(a)(11) 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. An appeal filed with the Board of Immigration Appeals (BIA) was dismissed on October 4, 1990. The applicant filed a Motion to Reopen (MTR) and an application for stay of deportation. His application for stay of deportation was granted on April 17, 1991, pending consideration of the MTR. On December 13, 1991, the BIA granted the MTR and remanded the record to the immigration judge. An immigration judge denied an application for relief under section 212(c) of the Act and the BIA subsequently dismissed an appeal on March 24, 1997. The record reflects that the applicant departed the United States on November 16, 1995, en route to Canada. The applicant was arrested in Canada for the offense of importing 1.4 kilograms of cocaine. On June 11, 1996, the applicant was convicted of the above offense and he was sentenced to nine years imprisonment. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (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 U.S. citizen spouse and children.

The District Director determined that the applicant is inadmissible to the United States pursuant to section 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, and section 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. The District Director concluded that the applicant is not eligible for any exception or waiver under the Act and denied the Form I-212 accordingly. *See District Director's Decision* dated November 7, 2003.

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, filed by the applicant's spouse, she states that the applicant completed his sentence and is presently living in Jamaica. According to the applicant's spouse the applicant has not returned to the United States since March 9, 1993. Finally, she requests that the Form I-212 be reexamined and the applicant be allowed to enter the United States.

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 other in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so....is inadmissible.

Based on the applicant's drug related convictions he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act. In addition, the quantity of the controlled substance involved in the applicant's arrests 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.