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U.S. Department of Homeland Security
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Washington, DC 20529



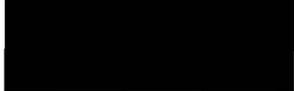
U.S. Citizenship and Immigration Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 29 2007

IN RE:

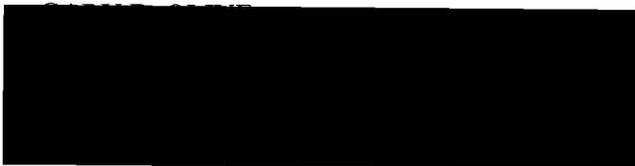
Applicant:



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:



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, 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 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 was admitted into the United States as a Lawful Permanent Resident (LPR) on March 2, 1987. On October 5, 1993, in the United States District Court, Southern District of Texas, the applicant was convicted of the offenses of conspiracy to possess with intent to distribute and possession with intent to distribute in excess of 5 kilograms of cocaine. On December 17, 1993 the applicant was sentenced to 150 months of imprisonment. On June 14, 1996, an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was served on him. On July 3, 1996, an immigration judge ordered the applicant deported from the United States pursuant to section 241(a)(2)(A)(iii)¹ of the Immigration and Nationality Act (the Act), for having been convicted of an aggravated felony at any time after admission, and section 241(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. Consequently, on December 6, 1997, the applicant was deported from the United States. The applicant is inadmissible to the United States pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He now 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 father and LPR sister.

The 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 Director concluded that the applicant is not eligible for any exception or waiver under the Act. In addition, the Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated February 13, 2006.

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

¹ Now section 237(a)(2)(A)(iii) of the Act.

² Now section 237(a)(2)(A)(iii) of the Act.

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 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 the Director failed to recognize the hardship he has incurred since his removal. The applicant does not dispute the fact that he committed a felony in the United States but states that he served his sentence, has been rehabilitated and has not been involved in any offense since his release. In addition, the applicant states that his family has been devastated and that this father is in the process of filing a Petition for Alien Relative on his behalf. The applicant submits letters of recommendation regarding his behavior in Mexico.

The AAO notes that the letters of recommendation, submitted by the applicant, are in Spanish with no English translation, as required pursuant to 8 C.F.R. 103.2(b)(3).

Before the AAO can weigh the discretionary factors in this case it must first determine if the applicant can benefit from a waiver of inadmissibility due to his criminal conviction. Based on the applicant's conviction and the quantity of the controlled substance involved, the Director found that the applicant was involved in the trafficking of a controlled substance and he is inadmissible 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.

(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.

In the instant case, the applicant's conviction is an aggravated felony for immigration purposes.

Section 101(a)(43) of the Act defines the term "aggravated felony":

(B) illicit trafficking in controlled substance (as described in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code)

Section 212(h) of the Act provides, in pertinent part, that:

No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States.

As noted above, the applicant was admitted into the United States as an LPR on March 2, 1987. Since the applicant was previously admitted for lawful permanent residence and has been convicted of an aggravated felony, no waiver is available to him under section 212(h) of the Act. In addition no waiver is available to any alien inadmissible under section 212(a)(2)(A)(i)(II) of the Act (except for simple possession of less than 30 grams of marijuana) or 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.