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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



44

FILE:



Office: DALLAS, TEXAS

Date:

MAR 22 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Interim District Director, Dallas, Texas, 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 adjusted his status to that of a lawful permanent resident on May 9, 2000. On December 12, 2000, in the 194th Judicial District Court, Dallas, County, Texas, the applicant was convicted of the offense of possession of a controlled substance, namely less than one gram of cocaine. The applicant was sentenced to 180 days imprisonment and a \$1,500 fine. On February 7, 2001, a Notice to Appear (NTA) for a removal hearing before an immigration judge was served on him. On March 30, 2001, an immigration judge ordered the applicant removed from the United States pursuant to section 237(a)(2)(B)(i) of the Act, for having been convicted of a violation of any law or regulation relating to a controlled substance. Consequently, on March 31, 2001, the applicant was removed from the United States. The applicant is inadmissible under 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 United States and reside with his Lawful Permanent Resident (LPR) parents.

The Interim District Director determined that the applicant was removed from the United States for having been convicted of an aggravated felony. In addition, the Interim 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 he is not eligible for any exception or waiver of the Act. The Interim District Director then denied the Form I-212 accordingly. See *Interim District Director's Decision* dated September 17, 2003.

On appeal, counsel states that the applicant was not convicted of an aggravated felony as defined by the Act. Counsel further states that the decision is unfounded and that the applicant is eligible for relief pursuant to a Form I-212 as well as a waiver under section 212(h) of the Act. In addition, counsel states that the applicant's ties in the United States are significant because he has lived in the United States most of his life. Finally, counsel requests that the AAO review the decision rendered on September 17, 2003.

The AAO agrees with counsel in that the applicant was not convicted of an aggravated felony. The record of proceeding reflects that the applicant was removed from the United States pursuant to section 237(a)(2)(B)(i) of the Act, for having been convicted of the offense of possession of a controlled substance and not section 237(a)(2)(A)(iii) of the Act, for having been convicted of an aggravated felony, as mentioned by the Interim District Director.

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.

To recapitulate, on March 31, 2001, the applicant was removed from the United States. Therefore, the applicant is clearly inadmissible under sections 212(a)(9)(A) of the Act and must receive permission to reapply for admission.

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. As noted above, based on the applicant's conviction he is clearly inadmissible pursuant to section 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-

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

The Secretary may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

As noted above, 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. 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.