

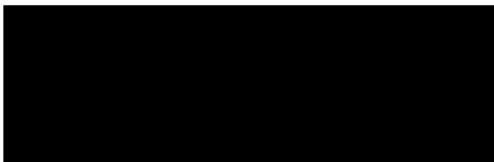
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 20 2007

IN RE: [Redacted]

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant appears to be represented; however the applicant did not sign the Form G-28, Notice of Entry of Appearance as Attorney or Representative. While all representations will be considered, the decision will be furnished only to the applicant.

The applicant is a native and citizen of Mexico who, on May 19, 1998, pled guilty to and was convicted of possession of a controlled substance in violation of section 11377(a) of the California Health and Safety Code (HS). The applicant was sentenced to one year and four months in jail. On March 18, 1999, was ordered removed from the United States. On the same day, the applicant was removed from the United States and returned to Mexico. On September 17, 2001, the applicant was ordered removed after he had reentered the United States without a lawful admission or parole and without permission to reapply for admission after having been previously removed. On the same day, the applicant was removed from the United States and returned to Mexico. On June 17, 2002, the applicant was ordered removed after he had reentered the United States without a lawful admission or parole and without permission to reapply for admission after having been previously removed. On July 26, 2002, the applicant pled guilty to and was convicted of possession of a controlled substance for sale in violation of section 11378 of the HS. The applicant was sentenced to sixteen months in jail. On March 26, 2003, the applicant was removed from the United States and returned to Mexico. On March 10, 2005, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i) as an alien convicted of an aggravated felony who seeks admission to the United States after being ordered removed. The applicant requests 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 reside in the United States with his lawful permanent resident wife and his U.S. citizen children.

The director determined that the applicant was inadmissible pursuant to sections 212(a)(2)(A)(i)(II), 212(a)(2)(C), 212(a)(9)(A), 212(a)(9)(B) and 212(a)(9)(C) of the Act, 8 U.S.C. §§ 1182(a)(2)(A)(i)(II), 1182(a)(2)(C), 1182(a)(9)(A), 1182(a)(9)(B) and 1182(a)(9)(C), for having been convicted of a controlled substance violation that is not simple possession of marijuana less than 30 grams, for being an illicit trafficker of a controlled substance, for seeking admission to the United States after being ordered removed, for being unlawfully present in the United States and for illegally reentering the United States after having been removed. The director also determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The director denied the Form I-212 accordingly. *See Director's Decision* dated August 3, 2006.

On appeal, counsel contends that the applicant should be granted permission to reapply for admission due to the extreme hardship that both he and his family are suffering. *See Counsel's Brief*, dated September 24, 2006. In support of his contentions, counsel submits the referenced brief, an affidavit from the applicant's wife, birth certificates and marriage certificates for the applicant's family members, the first page of child assessment reports for the applicant's stepchildren, and financial documentation. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years 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.
- (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 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. [emphasis added]

Section 101(43) of the Act states in pertinent part:

(43) The term "aggravated felony" means-

....

(B) illicit trafficking in a controlled substance . . .

The AAO finds that the applicant in the instant case was ordered removed from the United states pursuant to section 235(b)(1) of the Act, was convicted of possession of a controlled substance for sale, an aggravated felony and, therefore, must receive permission to reapply for admission. Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

(1) Criminal and related grounds. —

(A) Conviction of certain crimes. —

(i) In general. — Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of —

(II) a violation of (or conspiracy or attempt to violate) any law or regulation 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 Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or 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* (emphasis added.)

The AAO finds that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act for having been convicted of possession of a controlled substance and possession of a controlled substance for sale, violations related to a controlled substance.

The Act makes it very clear that the section 212(h) waiver applies only to controlled substance cases that involve a *single* offense of *possession* of 30 grams or less of marijuana. In this case, the applicant was convicted of two violations related to a controlled substance, one of which was possession of a controlled substance for sale, i.e., trafficking.

Section 212(a)(2)(C) provides:

CONTROLLED SUBSTANCE TRAFFICKERS- Any alien who the consular officer or the Attorney General knows or has reason 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 AAO finds that the applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act, for having been convicted of possession of a controlled substance for sale, a violation reflecting his involvement in the illicit trafficking of a controlled substance, a ground for which there is no waiver available.

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.

The applicant is subject to the provisions of sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, which are very specific and applicable. No waiver is available to an alien who has been convicted of more than a single simple possession of marijuana in an amount less than 30 grams. No waiver is available to an alien who is a trafficker in any controlled substance. Therefore, 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. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed.

ORDER: The appeal is dismissed.