

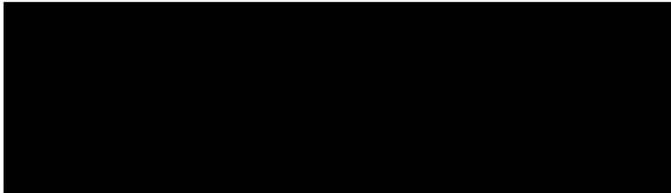
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **APR 03 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 after removal 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. On August 24, 1989, the applicant's daughter, [REDACTED] was born in California. On March 2, 1992, the applicant was lawfully admitted to the United States. On December 16, 1992, the applicant's son, [REDACTED] was born in California. On July 30, 1995, the applicant's daughter, [REDACTED], was born in California. On July 13, 1996, the applicant's daughter, [REDACTED], was born in California. On July 13, 1998, the applicant filed an Application for Naturalization (Form N-400). On April 17, 1999, the applicant was apprehended attempting to cross the Mexico-California border with 49.75 pounds of marijuana, while his mother and daughter were in the vehicle. On April 18, 1999, the applicant's son, [REDACTED], was born in California.¹ On May 4, 1999, a Notice to Appear (NTA) was issued for the applicant. On May 7, 1999, an immigration judge administratively closed the applicant's immigration court case. On August 12, 1999, the applicant was convicted of Importation of Marijuana, in violation of 21 U.S.C. §§ 952 and 960, and was sentenced to four (4) months imprisonment and three (3) years probation. On September 8, 1999, an immigration judge reopened the applicant's immigration case. The applicant filed an Application for Cancellation of Removal for Certain Permanent Residents (Form EOIR-42A). On January 13, 2000, an immigration judge denied the application for cancellation of removal and ordered him removed to Mexico. On February 9, 2000, a Warrant of Removal/Deportation (Form I-205) was issued. The applicant filed an appeal of the immigration judge's decision to the Board of Immigration Appeals (BIA); however, the applicant withdrew his appeal on March 3, 2000. On March 6, 2000, the applicant was removed from the United States. In July 2000, the applicant reentered the United States without inspection. On May 28, 2002, the applicant's father, a lawful permanent resident, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On July 22, 2002, the applicant filed another Form N-400. On January 6, 2003, the applicant's Form N-400 was denied, his prior removal order was reinstated, and a Form I-205 was issued. On January 7, 2003, the applicant was again removed from the United States. On October 14, 2004, the applicant reentered the United States without inspection. On July 31, 2006, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On August 26, 2006, the applicant's Form I-130 was approved. On September 15, 2006, the applicant's prior removal order was reinstated, a Form I-205 was issued, and the applicant was removed from the United States. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I); 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II); and 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C). 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 reside with his lawful permanent resident common-law wife, lawful permanent resident parents, and United States citizen children.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), for being convicted of a controlled substance trafficking offense, and section

¹ The AAO notes that the applicant is not listed as the father on [REDACTED] birth certificate.

212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for violating any law or regulation relating to a controlled substance.

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

(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...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 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(a)(2). Criminal and related grounds.-

(C) Controlled substance traffickers.-

Any alien who the consular officer or the Attorney General [now, Secretary, Department of Homeland Security] knows or has reason to believe-

(i) is or has been an illicit trafficker in any controlled substance...

. . . .

is inadmissible.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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

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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the [Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

On appeal, the applicant, through counsel, claims "that his removal has caused and will continue to cause undue hardship to his Legal Permanent Resident wife, and to their five U.S. citizen children." *Appeal Brief*, filed March 28, 2007. The AAO notes that the record fails to establish that the applicant is married to a lawful permanent resident. Counsel claims that applicant's common-law wife "has been the sole provider for their children." *Id.* The AAO notes that the applicant's common-law wife states the applicant's "family has been supporting [her] financially for these past years so [she] could afford the house payment and provide for [her] children." *Declaration of [REDACTED]*, dated March 17, 2007. The applicant's common-law wife states the applicant's "parents are sick and in great need of support. His family will no longer be able to continue assisting [her] and this will cause extreme hardship on [her] children." *Id.* The AAO notes that the applicant's father was diagnosed with Coronary Artery Disease and his mother was diagnosed with atrial fibrillation. *See letter from [REDACTED] MD*, dated March 2, 2006. The AAO notes that there is no evidence in the record establishing that the applicant provides any assistance to his parents. The applicant's wife states the applicant is "deeply regretful" for his marijuana trafficking conviction. *Declaration of [REDACTED], supra.* The AAO notes that the applicant has attempted to demonstrate remorse for his criminal activity; however, the applicant has been convicted of being in possession of a controlled substance, which is an aggravated felony, and he is statutorily ineligible for any waivers of inadmissibility.

The AAO finds that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for being in possession of a controlled substance, and section 212(a)(C) of the Act, 8 U.S.C. § 1182(a)(C), for trafficking. To qualify for a waiver pursuant to section 212(h) of the Act, he must have been convicted of a single offense of simple possession of 30 grams or less of marijuana. Since the applicant was not convicted of a single offense of simple possession of 30 grams or less of marijuana, there is no waiver of the applicant's ground of inadmissibility. The applicant is inadmissible under sections 212(a)(2)(A)(i)(II) and (C) of the Act, and therefore, he is statutorily ineligible for a waiver of inadmissibility.

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

The Attorney General [Secretary of Homeland Security] 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.)

Additionally, eligibility for a waiver under section 212(h) is limited, in 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...
....

The AAO notes that under section 101(a)(43)(B) of the Act, illicit trafficking in a controlled substance is an aggravated felony. Since the applicant was convicted of an aggravated felony after he was lawfully admitted for permanent residence to the United States, he is ineligible for a waiver under section 212(h) of the Act. Additionally, the applicant is statutorily ineligible for relief under section 212(h) based on his controlled substance conviction.

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 section 212(h) of the Act. No waiver is available to an alien who has been convicted of drug related crimes or who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if since the date of such admission the alien has been convicted of an aggravated felony, 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 Form I-212 was properly denied by the Director.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.