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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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H4



FILE:

Office: VERMONT SERVICE CENTER

Date: **JAN 30 2008**

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) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, the applicant requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed March 9, 2006. The record contains no evidence that a brief or additional evidence was filed within 30-days. Therefore, the record must be considered complete.

The applicant is a native and citizen of the Dominican Republic who was lawfully admitted to the United States on August 9, 1981. On August 25, 1988, the applicant's son, [REDACTED] was born in Rhode Island. On August 19, 1989, the applicant's son, [REDACTED] was born in Rhode Island. On December 13, 1989, the applicant was convicted of being in possession of a controlled substance, heroin, with intent to manufacture, distribute or dispense. On July 9, 1991, the applicant filed an Application to File Petition for Naturalization (N-400). On December 16, 1991, the Service issued an Order to Show Cause (OSC) for the applicant. On May 29, 1992, an immigration judge ordered the applicant deported from the United States. The applicant, through counsel, filed an appeal of the immigration judge's decision to the Board of Immigration Appeals (BIA), which the BIA dismissed on November 9, 1995. On January 18, 1996, a Warrant of Deportation (Form I-205) was issued for the applicant. On April 13, 1996, the applicant was deported to the Dominican Republic. 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 parents and siblings, and United States citizen children.

The Acting Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for being ordered removed under section 240 or any other provision of law, 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 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), 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 claims that he has been rehabilitated. He states he "would like to get [the Service's] forgiveness on all [his] past mistakes." *Letter attached to Form I-290B*, dated March 2, 2006. The applicant admits that what he did was wrong and if the Service "give[s] [him] another chan[c]e [he] will be a good citizen...[He] regret[s] the time that [he] spen[t] doing nothing, but just harming [him]self, [his] family and friends. Now [he has] grown up as an adult and [he is] willing to be the good citizen that [the United States] deserves. [He is] willing to be the father [he hasn't been] for [his] children and teach them with [his] experience that wrong doing only causes damage to oneself and others." *Id.* The AAO notes that the

applicant has attempted to demonstrate remorse for his criminal activities; 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 with intent to distribute. In order for the applicant to qualify for a waiver pursuant to section 212(h) of the Act, he must have been convicted of only 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 212(a)(2)(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:

- (h) 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 Acting 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.