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U.S. Citizenship  
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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUN 16 2008

IN RE:

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.

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 is a native and citizen of Mexico who, on July 9, 1990, was admitted to the United States as a lawful permanent resident. On August 8, 2002, the applicant pled guilty to and was convicted of possession of an opium pipe in violation of section 11364 of the California Health and Safety Code (CHSC). The applicant was sentenced to 12 months of probation. On January 29, 2003, the applicant was convicted of manufacturing methamphetamine in violation of section 11379.6(a) of the CHSC. The applicant was sentenced to three years in jail. On April 27, 2004, after immigration officers were informed of the applicant's convictions, the applicant submitted a letter to immigration officers stating that he was born in the United States along with a certificate of baptism, in order to qualify for a work furlough. On May 14, 2004, the applicant was placed into proceedings. On May 19, 2004, the immigration judge ordered the applicant removed from the United States pursuant to sections 237(a)(2)(A)(iii) and 237(a)(2)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1227(a)(2)(A)(iii) and 1227(a)(2)(B)(i), for being convicted of an aggravated felony and a violation of any law or regulation related to a controlled substance, other than a single offense involving possession of 30 grams or less of marijuana, after admission to the United States. On the same day, the applicant was removed from the United States and returned to Mexico. On November 13, 2006, the applicant filed the Form I-212. The return address on the Form I-290B indicates that the applicant has reentered the United States without a lawful admission or parole and without permission to reapply for admission. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) as an alien convicted of an aggravated felony who seeks admission to the United States within 20 years of being 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 return to the United States as a lawful permanent resident and reside with his family.

The director determined that the applicant was inadmissible pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, 8 U.S.C. §§ 1182(a)(2)(A)(i)(II) and 1182 (a)(2)(C), for having been convicted of a controlled substance violation that is not simple possession of marijuana less than 30 grams and for being an illicit trafficker of a controlled substance. The director found that the applicant was mandatorily inadmissible and denied the Form I-212 accordingly. *See Director's Decision* dated April 12, 2007.

On appeal, the applicant contends that he has made mistakes in the past but has turned his life around. He contends that he helps others by teaching and counseling them regarding drugs and alcohol and that he does not want to break any more laws. *See Applicant's Letter*, dated May 8, 2007. In support of his contentions, the applicant submits the referenced letter, documentation evidencing his work as a substance abuse counselor and letters of recommendation. 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]

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

(43) The term "aggravated felony" means-

....

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

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.)

No waiver shall be provided 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 . . . since the date of such admission the alien has been convicted of an aggravated felony . . .

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 manufacturing methamphetamine, a violation related to a controlled substance.

The Act makes it clear that a section 212(h) waiver is available only for controlled substance convictions that involve a single offense of *possession* of 30 grams or less of marijuana. In this case, the applicant was convicted of manufacturing methamphetamine and is ineligible for waiver consideration. The AAO also finds that the applicant in the instant case is not eligible for a waiver under section 212(h) of the Act because he was convicted of manufacturing methamphetamine, an aggravated felony under section 101(a)(43) of the Act, after he had been admitted to the United States as a lawful permanent resident.

*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) of the Act, which is very specific and applicable. No waiver is available to an alien who has been convicted of more than simple possession of marijuana in an amount less than 30 grams. No waiver is available to a lawful permanent resident who has been convicted of an aggravated felony in relation to a controlled substance violation. 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 as a matter of discretion.

**ORDER:** The appeal is dismissed.