

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

44



FILE: Office: CALIFORNIA SERVICE CENTER Date: **JUN 16 2008**

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:



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 is a native and citizen of Mexico who, on April 6, 1972, was admitted to the United States as a lawful permanent resident. On June 15, 1994, the applicant was convicted of possession of a firearm with a controlled substance, in violation of section 11370.1 of the California Health and Safety Code (CHSC). The applicant was sentenced to two years in jail. On January 19, 1996, the applicant was convicted of possession of a controlled substance for sale in violation of section 11378 of the CHSC. The applicant was sentenced to six months in jail. On February 25, 1997, the applicant was placed into immigration proceedings. On September 25, 1997, the immigration judge denied the applicant's application for voluntary departure and ordered him removed from the United States. On April 17, 2003, the applicant's U.S. citizen father filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on July 12, 2006. On December 29, 2004, the applicant filed the Form I-212. 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 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 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)(I), 212(a)(2)(A)(i)(II), and 212(a)(2)(C) of the Act, 8 U.S.C. §§ 1182(a)(2)(A)(i)(I), 1182(a)(2)(A)(i)(II) and 1182 (a)(2)(C), for having been convicted of a crime involving moral turpitude and 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 March 16, 2007.

On appeal, counsel contends that the applicant's application for permission to reapply for admission should be granted due to the extreme hardship he and his family members are suffering. *See Counsel's Brief*, dated May 8, 2007. In support of his contentions counsel submits the referenced brief, letters from the applicant's family members, a letter from the applicant 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]

Counsel contends that the AAO should adjudicate the applicant's application for permission to reapply for admission despite the applicant's criminal past. However, 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 possession of a firearm with a controlled substance and possession of a controlled substance for sale, violations 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 a firearm with a controlled substance, containing a cocaine base, a substance containing cocaine, a substance containing heroin, methamphetamine, a liquid or crystalline substance containing phencyclidine, plant material containing phencyclidine or a hand-rolled cigarette treated with phencyclidine, and possession of a controlled substance for sale, i.e., trafficking, 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 possession of a controlled substance for sale, an aggravated felony, after he had been admitted to the United States as a lawful permanent resident.

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 involvement in the illicit trafficking of a controlled substance. No waiver is available to individuals found inadmissible under section 212(a)(2)(C) of the Act.

*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 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. 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 as a matter of discretion.

**ORDER:** The appeal is dismissed.