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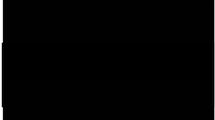
U.S. Citizenship  
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FILE:



Office: CALIFORNIA SERVICE CENTER  
[consolidated therein]

Date **MAY 30 2008**

IN RE:

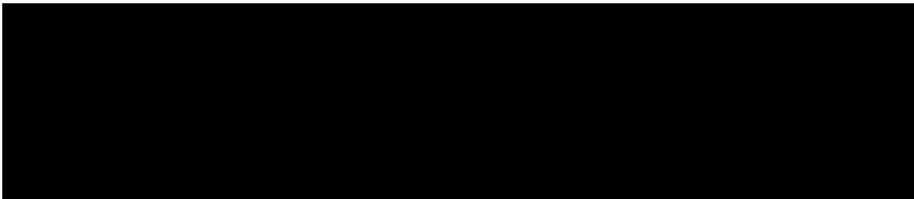
Applicant:



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:



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 who initially entered the United States without inspection on July 11, 1988. On November 26, 1990, the applicant was arrested for selling/transporting a controlled substance, cocaine, in violation of California Health and Safety Code (H&S) § 11352(a), and for possessing for sale a controlled substance, in violation of California H&S § 11351. On January 23, 1991, the applicant was convicted of selling/transporting a controlled substance, in violation of California H&S 11352(a), and was sentenced to 180 days in jail and three (3) years probation. On March 25, 1991, an Order to Show Cause (OSC) was issued against the applicant. On March 28, 1991, an immigration judge ordered the applicant deported from the United States, a Warrant of Deportation (Form I-205) was issued, and the applicant was deported to Mexico. On the same day, the applicant reentered the United States without inspection. On June 27, 1992, the applicant married [REDACTED], a lawful permanent resident of the United States, in California. On January 28, 1993, the Municipal Court of Los Angeles, Van Nuys Judicial District, clarified that the applicant was convicted of transporting a controlled substance for personal use, not sales, in violation of California H&S § 11352(a). On April 13, 1994, the applicant's daughter, [REDACTED] was born in California. On August 16, 1996, the applicant's wife became a United States citizen. On October 22, 1996, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and an Application for Waiver of Grounds of Excludability (Form I-601). On November 27, 1997, the applicant's daughter, [REDACTED] was born in California. On February 12, 2000, the applicant's son, [REDACTED] was born in California. On February 10, 2003, the applicant's Form I-130 was approved. On April 30, 2003, the applicant's son, [REDACTED] was born in California. On April 13, 2004, the District Director, Los Angeles, California, denied the applicant's Form I-485 and Form I-601, finding that the applicant was statutorily ineligible for a waiver under section 212(h) of the Immigration and Nationality Act (the Act). On December 8, 2005, the applicant's son, Jacob, was born in California. The applicant is inadmissible to the United States under sections 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II); 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A); 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I); and 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(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 wife and five 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 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. The Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated March 27, 2002.

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

(A) Conviction of certain crimes. -

(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.

....

C) 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.

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.)

The AAO finds that the Director erred in finding the applicant inadmissible for being convicted of a controlled substance trafficking offense under section 212(a)(2)(C) of the Act. The record of proceedings establishes that the applicant was convicted of transporting a controlled substance for "personal" use, not "sale." The AAO notes that even though the applicant was not convicted of a controlled substance trafficking offense, the amount of the controlled substance in his possession determines if he is inadmissible under section 212(a)(2)(C) of the Act. In *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977), the Board of Immigration Appeals (Board) held that an actual conviction of a drug-trafficking offense or violation is not necessary to establish the ground of inadmissibility under section 212(a)(2)(C) of the Act. Further, one of the factors considered by the Federal Courts to determine whether possession of a controlled substance shall also be deemed sufficient to support a finding that the individual has also engaged in illicit drug trafficking, is the amount of the illicit drugs discovered. If the amount of the illicit drug is large enough, trafficking may be inferred on this basis alone. *Matter of Franklin*, 728 F.2d 994 (8<sup>th</sup> Cir. 1984). The intent to distribute a controlled substance has been inferred solely from possession of a large quantity of the substance. *United States v. Koua Thao*, 712 F.2d 369 (8<sup>th</sup> Cir. 1983) (154.74 grams of opium); *United States v. DeLeon*, 641 F.2d 330 (5<sup>th</sup> Cir. 1980) (294 grams of cocaine); *United States v. Grayson*, 625 F.2d 66 (5<sup>th</sup> Cir. 1980) (413.1 grams of 74% pure cocaine); *United States v. Love*, 559 F.2d 107 (5<sup>th</sup> Cir. 1979) (26 pounds of marijuana); *United States v. Muckenthaler*, 584 F.2d 240 (8<sup>th</sup> Cir. 1978) (147 grams of cocaine). The AAO notes that the record establishes that the applicant was in

possession of cocaine; however, there is no indication of the amount of cocaine he had in his possession. The AAO finds that the record does not establish that the applicant is inadmissible under section 212(a)(2)(C) of the Act; however, he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for violating any law relating to a controlled substance.

The applicant, through counsel, submitted documents establishing that the applicant's drug conviction was set aside on March 26, 2002. *See minute order, Superior Court of California, Country of Los Angeles*, dated March 26, 2002. The AAO notes that even though the applicant's conviction was set aside after he successfully completed his probation, he has still been convicted of a crime for immigration purposes. Section 101(a)(48) of the Act states that when an alien enters a plea of guilty, or is found guilty, and a formal judgment of guilt is entered by a court, where a judge has ordered some form of punishment, penalty, or restraint on the alien's liberty, there has been a conviction for immigration purposes. On January 23, 1991, the applicant was convicted of selling/transporting a controlled substance (cocaine), in violation of California H&S 11352(a), and was sentenced to 180 days in jail and three (3) years probation, which is a restraint on the applicant's liberty.

Since 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 violating any law relating to a controlled substance, in order for him 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. The applicant was not convicted of a single offense of simple possession of 30 grams or less of marijuana and there is no waiver of the applicant's ground of inadmissibility. The applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act; and, therefore, he is statutorily ineligible for a waiver of inadmissibility.

*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; 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.