

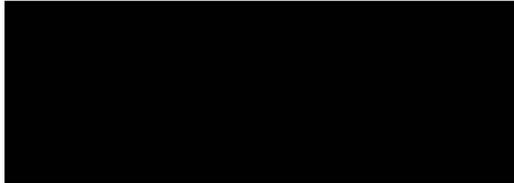
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U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W., Rm. 3000
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U.S. Citizenship
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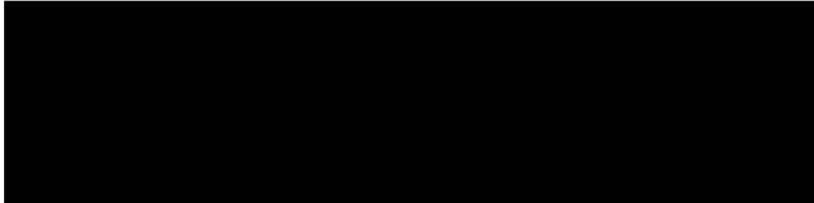
H4

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 28 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 The Director's decision is withdrawn and the matter remanded to the Director for further action consistent with this decision.

The applicant is a native and citizen of Mexico. On August 7, 1992, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On December 21, 2005, the applicant's Form I-130 was approved.

The AAO notes that the record reflects that on January 23, 1996, the applicant or someone using his identity was arrested for importing/transporting more than 28.5 grams of marijuana into California, in violation of California Health and Safety Code (H&S) § 11360(a), and for being in possession of marijuana for sale, in violation of California H&S § 11359. On March 5, 1996, the applicant or someone using his identity was convicted of being in possession of marijuana for sale, in violation of California H&S § 11359, and was sentenced to 62 days in jail and three (3) years probation. On March 15, 1996, an immigration judge ordered the applicant or someone using his identity excluded and deported from the United States, and he was deported from the United States on the same day.

On May 10, 2006, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On April 9, 2007, 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 that he was statutorily ineligible for a waiver under section 212(h) of the Act. The Director denied the applicant's Form I-212 accordingly. *Director's Decision*, dated April 9, 2007.

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 [now, Secretary of Homeland Security] 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 [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....

Counsel contends that the Director "erred in denying applicant's Form I-212.... The Form I-212 was denied based upon the allegation that applicant was convicted of possession for sale of marijuana on March 5, 1996. This allegation is incorrect. Applicant was not convicted of possession of marijuana for sale. He has never been convicted of any crime.... The conviction does not pertain to him.... Applicant admits that he was returned to Mexico around March 1999 for using imposter documents." *Attachment to Form I-290B*, filed May 3, 2007. The record contains photographs and signatures of the applicant and the alleged imposter, who was convicted of being in possession of marijuana for sale on March 5, 1996, and the AAO notes that the photos and signatures are different, and that the last name is spelled differently. The applicant's record contains no fingerprints or verification of criminal activity by the FBI. On appeal, counsel states that the applicant will attempt to be fingerprinted at a U.S. consulate in Mexico. The AAO finds this to be a reasonable suggestion. The AAO therefore remands the present matter to the Director to allow the applicant to have his fingerprints taken so that his identity can be confirmed. The Director's decision will be withdrawn and the record will be remanded to her. If, after the applicant's fingerprints are taken, the Director issues a new decision adverse to the applicant, the decision shall be certified to the AAO for review.

ORDER: The Director's decision is withdrawn. The matter is remanded to her for further action consistent with the foregoing discussion.