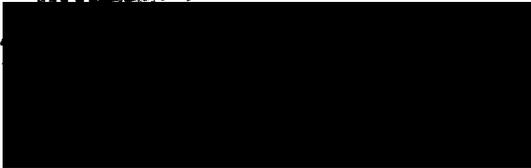


U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



HA

MAY 12 2003

FILE [redacted] Office: Harlingen, TX

Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under sections 237(a)(2)(A)(iii) and 237(a)(2)(B)(I) of the Immigration and Nationality Act, 8 U.S.C. §§ 1227(a)(2)(A)(iii) and 1227(a)(2)(B)(I).

ON BEHALF OF APPLICANT: Self-represented

**PUBLIC COPY**

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Application for Permission to Reapply for Admission into the United States after Deportation or Removal was denied by the District Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico, and that he is a former legal permanent resident of the United States. On March 12, 1998, the applicant was ordered 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), as an alien convicted of an aggravated felony and a crime involving a controlled substance. The applicant seeks permission to reapply for admission into the United States after deportation or removal (I-212 application) in order to reside with his wife and daughter.

The district director found that, based on the evidence in the record, the applicant is statutorily inadmissible to the United States (U.S.) pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182 (a)(2)(A)(i)(II), and that no waiver of inadmissibility is available to the applicant. The district director concluded that, in light of the applicant's inadmissibility, no useful purpose would be served in adjudicating or granting the applicant's I-212 application. The application was denied accordingly as a matter of discretion.

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

(2) 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 (2) (A) (i) (II) of . . . subsection [212(a)] insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

On January 9, 1995, the applicant was convicted of conspiracy to possess, with intent to distribute cocaine, in violation of Title 21 U.S.C. § 246. The simple possession of marihuana exception set forth in section 212(h) of the Act clearly does not apply to the applicant's conviction. Moreover, no other waivers are available for the applicant's ground of inadmissibility.

In *Matter of Tin*, 14 I&N Dec. 373 (BIA 1973), the Board of Immigration Appeals (BIA) held that:

In determining whether the consent required by statute [for an application for permission to reapply for admission] should be granted [by the Attorney General], all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

*Tin* at 373-374. The applicant's appeal asserted general hardship to his wife and daughter due to separation and financial difficulties.

*Matter of Martinez-Torres*, 10 I&N Dec. 776 (BIA 1964), held, however, that in the case of an applicant who is mandatorily inadmissible to the U.S. "no purpose would be served in granting [the] application for permission to reapply for admission into the United States." The BIA held further that the district director's action in denying an I-212 application as a matter of administrative discretion was proper. A review of the documentation in the record reflects that the applicant is statutorily inadmissible to the United States and that the district director's discretionary denial of his application was therefore proper.

**ORDER:** The appeal is dismissed.