U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: EL PASO, TEXAS Date: DEC 19 2006

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)(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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the District Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application declared unnecessary.

The applicant is a native and citizen of Mexico who was admitted into the United States as a Lawful Permanent Resident (LPR) on July 7, 1959. On March 4, 1994, in the 205th Judicial District Court, El Paso County, Texas, the applicant was convicted of the offense of possession of cocaine under 28 grams. The applicant was placed in deportation proceedings and on November 22, 1994, an immigration judge ordered the applicant deported from the United States pursuant to section 241(a)(2)(B)(i) of the Immigration and Nationality Act (the Act), for having been convicted of any law or regulation relating to a controlled substance. Consequently, on February 21, 1996, the applicant was deported to Mexico. The applicant is inadmissible to the United States pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He 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 travel to the United States as a nonimmigrant visitor.

The District Director determined that the applicant is inadmissible to the United States because he falls within the purview of section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II) for having been convicted of a violation of any law or regulation relating to a controlled substance. In addition the District Director determined that the applicant is not eligible for any exception or waiver under the Act and denied Form I-212 accordingly. *See District Director's Decision* dated October 6, 2005.

Section 212(a)(9)(A) of the Act states in pertinent part:

> (A) Certain aliens previously removed.-
>
> > (ii) Other aliens. - Any alien not described in clause (i) who-
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> > > (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 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 aliens 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.

The AAO finds that the District Director erred in his decision stating that the applicant is not eligible for any exception or waiver under the Act. The applicant in the present case filed a Form I-212 in order to be eligible to apply for a nonimmigrant visa. If the applicant's Form I-212 is granted he will be eligible to file a waiver of his inadmissibility, for having been convicted of a violation of any law or regulation relating to a controlled substance, pursuant to section 212(d)(3) of the Act.

To recapitulate, the applicant was deported from the United States on February 21, 1996. The record of proceeding does not reflect that the applicant reentered or attempted to reenter the United States after his deportation. The record reflects that the applicant resides in Mexico and there is no documentary evidence to show otherwise. It has now been more than ten years since the applicant's date of deportation. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act. Accordingly, the appeal will be dismissed and the Form I-212 will be declared unnecessary, as it has been established that the applicant is no longer inadmissible under section 212(a)(9)(A)(ii) of the Act.

The AAO notes that the applicant remains inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act. Since the applicant wishes to visit the United States as a nonimmigrant visitor, he must file a waiver of his ground of inadmissibility pursuant to section 212(d)(3) of the Act with the American Consulate that has jurisdiction over his place of residence.

ORDER: The appeal is dismissed and the application is declared unnecessary.