U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 0 8 2006

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: 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.

for

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 October 18, 1990, was admitted to the United States as a lawful permanent resident. On September 18, 1995, the applicant was convicted of possession of 57.27 kilograms of marijuana with intent to distribute in violation of 21 U.S.C. § 841(a)(1). The applicant was sentenced to 15 months in jail. On November 21, 1995, the applicant was placed into proceedings. On June 24, 1996, the immigration judge ordered the applicant removed from the United States. On July 9, 1996, the applicant was removed from the United States and returned to Mexico. The applicant is the father of a U.S. citizen daughter and is the spouse of a lawful permanent resident. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) and 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 and reside with his U.S. citizen daughter and lawful permanent resident spouse.

The director determined that the applicant did not provide evidence to establish that he was eligible for the requested waiver and denied the Form I-212 accordingly. *See Director's Decision* dated October 13, 2005.

On appeal, the applicant contends that he should be given the opportunity to see his family and they require his presence to support them. *See Applicant's Brief,* dated November 4, 2005.

Section 101(43) of the Act states in pertinent part:

> (43) The term "aggravated felony" means-
>
> (B) illicit trafficking in a controlled substance . . . including a drug trafficking crime

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.) . . . if
>
> (1)
> . . . .
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien
>
> 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 . . .

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. The AAO finds that the applicant is inadmissible pursuant to 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 possession of marijuana with intent to distribute, a violation of law related to a controlled substance and a drug trafficking crime. The Act makes it very clear that the section 212(h) waiver applies only to controlled substance cases that involve a single offense of possession of 30 grams or less of marijuana. In this case, the applicant was convicted of unlawful possession of 57.27 kilograms of marijuana. Thus, the applicant is statutorily ineligible to be considered for a section 212(h) waiver. Additionally, the AAO finds that the applicant in the instant case does not qualify for a waiver under section 212(h) of the Act because he was convicted of possession of marijuana with intent to distribute, an aggravated felony, after he had been admitted to the United States as a lawful permanent resident.

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(a)(2)(A)(i)(II) of the Act, which are very specific and applicable. The applicant is not eligible for a waiver of this ground of inadmissibility under section 212(h) of the Act, 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.

ORDER: The appeal is dismissed.