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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H4

FILE: [redacted] Office: SAN DIEGO, CA Date: MAR 11 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, San Diego, California denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The matter 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 November 16, 1993, appeared at the San Ysidro, California port of entry. The applicant made an oral false claim to U.S. citizenship. The applicant was referred to secondary inspection. The applicant admitted that he was not a U.S. citizen and that he did not have valid documentation to enter the United States. A search of the vehicle that the applicant was driving revealed that it contained 336.30 pounds of marijuana. The applicant was the sole occupant of the vehicle he was driving. The applicant failed to provide his true identity to immigration officers. On May 23, 1994, under the name "[redacted]" the applicant was found to be a juvenile delinquent upon conviction of the offense of juvenile delinquency, in violation of 18 U.S.C. § 5032, in that he did knowingly and willfully commit the offense of importation of marijuana in violation of 21 U.S.C. §§ 952 and 960. The applicant was sentenced to supervised probation until March 22, 1997. On September 1, 1994, the applicant was placed into immigration proceedings for attempting to enter the United States by a false oral claim to U.S. citizenship. On October 2, 1995, the immigration judge ordered the applicant removed from the United States *in absentia* under the name "[redacted]" The applicant failed to depart the United States.

On January 10, 1996, the applicant was arrested for burglary in San Diego, California. The record does not contain documentation indicating the outcome of these charges.

On April 20, 2001, the applicant married his U.S. citizen spouse in San Diego, California. On August 3, 2001, the applicant's U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on September 9, 2003. On March 27, 2008, the applicant filed the Form I-212 indicating that he continued to reside in the United States. On June 2, 2010, the applicant was arrested for false personation, making others liable and willful obtainment of another's identity in order to obtain credit, goods, services, etc. The record does not contain documentation indicating the outcome of these charges. On September 10, 2010, the applicant was removed from the United States and returned to Mexico.[1] The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant requests 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 in the United States with his U.S. citizen spouse and four U.S. citizen children.

The district director determined that the applicant is inadmissible pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, 8 U.S.C. §§ 1182(a)(2)(A)(i)(II) and 1182(a)(2)(C), for having been convicted of a crime relating to a controlled substance and for being a controlled substance trafficker. The district director determined that there was no waiver available to the

[1] The record is unclear as to whether the applicant has reentered the United States since his 2010 removal. The AAO notes that, if it is later found that the applicant illegally reentered the United States *at any time* after his 2010 departure, he is also inadmissible pursuant to section 212(a)(9)(C)(i) of the Act and is ineligible for permission to reapply for admission until he has remained outside the United States for a period of ten years. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010).

applicant and denied the Form I-212 accordingly. *See District Director's Decision* dated April 30, 2009.

On appeal, the applicant contends that improper application processing procedures, abuse of discretion, lack of substantial evidence supporting a legal conclusion of inadmissibility and incorrect application of the law occurred in the adjudication of his Form I-212. The applicant contends that he made a very serious mistake as a juvenile and that he wants a second chance and an opportunity to prove himself worthy of being in the United States. *See Form I-290B and Applicant's Letter,* dated June 1, 2009. In support of his contentions, the applicant submits the referenced Form I-290B, letter and copies of documentation already in the record. The entire record was reviewed in rendering a decision in this case.

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

> (A) Certain aliens previously removed.-
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> > (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
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> > (ii) Other aliens.-Any alien not described in clause (i) who-
> >
> > > (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 who 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 on a alien 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 [Secretary of Homeland Security] has consented to the alien's reapplying for admission.

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.)

On appeal, the applicant contends that he made a mistake as a juvenile.

The AAO finds that the applicant was determined to be a juvenile delinquent under the Federal Juvenile Delinquency Act (FJDA), 18 U.S.C. §§ 5031-5042, and that such a determination does not constitute a judgment of conviction for a crime within the meaning of section 101(a)(48)(A) of the Act. See *Matter of F-*, 4 I&N Dec. 726 (BIA 1952); *Matter of C-M-*, 5 I&N Dec. 327 (BIA 1953); *Matter of De La Nues*, 18 I&N Dec. (BIA 1981); *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981); and *In Re Devison*, 22 I&N Dec. 1362 (BIA 2000). As such, the AAO finds that the applicant is not inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

Section 212(a)(2)(C) provides:

> 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

The AAO, however, finds that the applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act, because a conviction is not required for a finding of inadmissibility under section 212(a)(2)(C) of the Act. The fact that an individual was determined to be a juvenile delinquent at the time of the offense does not foreclose a finding that an applicant is inadmissible as a trafficker. See *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977); and *Matter of Favela*, 16 I&N Dec. 753 (BIA 1979). A finding of inadmissibility under section 212(a)(2)(C) of the Act is dependent upon whether the evidence in the record reflects that there is sufficient evidence to reasonably believe that the applicant has been or is involved in the illicit trafficking of a controlled substance.

Generally speaking, intent to distribute is established when the controlled substance is either found on the person of the accused, or in a vehicle or boat driven or occupied by the accused, or in a dwelling where the accused resided or visited frequently. 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 (8th Cir. 1983) (154.74 grams of opium); *United States v. DeLeon*, 641 F.2d 330 (5th Cir. 1980) (294 grams of cocaine); *United States v. Grayson*, 625 F.2d 66 (5th Cir. 1980) (413.1 grams of 74% pure cocaine); *United States v. Love*, 559 F.2d 107 (5th Cir. 1979) (26 pounds of marijuana); *United States v. Muckenthaler*, 584 F.2d 240 (8th Cir. 1978) (147 grams of cocaine).

The record reflects that 336.30 pounds of marijuana were located in the vehicle which the applicant drove to the port of entry in an attempt to import the marijuana into the United States. The evidence in the record reflects that there is sufficient evidence to reasonably believe that the applicant has been involved in illicit trafficking of a controlled substance. No waiver is available to individuals found inadmissible under section 212(a)(2)(C) of the Act.

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 statutorily 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)(C) of the Act, which are very specific and applicable. No waiver is available for an alien who is a trafficker in any controlled substance. 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 as a matter of discretion.

ORDER: The appeal is dismissed.