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

U.S. Citizenship and Immigration Services

DATE: JUL 2 3 2013 Office: NEBRASKA SERVICE CENTER FILE:

IN RE:

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal pursuant to 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The Service Center Director, Lincoln, Nebraska, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), and the matter is now on appeal with the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who was found to be inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) for having been removed and having been convicted of an aggravated felony. The applicant seeks permission to reapply for admission into the United States (Form I-212) under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii). The applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having violated a law relating to a controlled substance and under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed a crime involving moral turpitude. The applicant's application for a waiver of inadmissibility (Form I-601) is the subject of a separate appeal.

On October 15, 2012, the Service Center Director concluded that no purpose would be served in approving the application for permission to reapply due to the applicant's ineligibility to apply for a waiver of his other grounds of inadmissibility.

On appeal, the applicant states that he has not had any convictions since his removal and his U.S. citizen spouse will suffer extreme hardship as a result of his inadmissibility.

In support of the waiver application, the record includes, but is not limited to: statements from the applicant; medical records for the applicant's spouse; biographical information for the applicant and his spouse; and documentation of the applicant's criminal and immigration history.

The applicant was found inadmissible under section 212(a)(9)(A)(ii) of the Act. Section 212(a)(9) of the Act states in pertinent part:

> (A) Certain aliens previously removed.-
> (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.
> (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 of an 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 has consented to the alien's reapplying for admission.
>
> ...

The record reflects that the applicant was placed into removal proceedings and ordered removed on May 7, 1999 under section 237(a)(2)(A)(iii) for having been convicted of an aggravated felony. The applicant's criminal record indicates that he was convicted of eight offenses, two of which involved the possession of cocaine. On August 8, 1997, before the 17th Circuit Court, Ft. Lauderdale, Florida, the applicant was found guilty of Possession of Cocaine, in violation of Florida Statute section 893.02(2)(A)(4). The applicant was sentenced to sixth months of confinement. On December 3, 1998, before the 17th Circuit Court, Ft. Lauderdale, Florida, the applicant was again found guilty of Possession of Cocaine, in violation of Florida Statute section 893.02(2)(A)(4). For this conviction, the applicant was sentenced to one year and one day of confinement in State Prison. The applicant's other convictions included, but are not limited to: Grand Theft in violation of Florida Statute section 812.014; Burglary in violation of Florida Statute 810.02; Possession of Burglary Tools in violation of Florida Statute section 810.06; and Petit Theft in violation of Florida Statute section 812.014. The applicant was found to have been convicted of an aggravated felony based on his conviction for burglary. The AAO does not need to reach a conclusion regarding that determination in these proceedings because as a result of the applicant's convictions for Possession of Cocaine, he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of an offense involving possession of a controlled substance and is ineligible for a waiver of inadmissibility of that ground of inadmissibility.

Section 212(h) of the Act provides, in pertinent parts:

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of 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 if -
> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --
> (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> (iii) the alien has been rehabilitated; or
> (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 [Secretary] 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 . . .; and (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The applicant is inadmissible under of section 212(a)(2)(A)(i)(II) of the Act, and is statutorily ineligible for a waiver of that ground of inadmissibility; 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. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964). As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the Service Center Director.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(A)(iii) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.