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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: NOV 2 6 2013 Office: MIAMI, FL FILE:

IN RE:

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

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
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Brazil and a citizen of Israel who entered the United States as a B1 visitor in 1994. On November 25, 1996, the applicant was granted permanent residence status. A subsequent investigation indicated that the applicant had been convicted of drug trafficking in Portugal in 1994 and had made false statements on his naturalization application, which was filed in 1997. On September 26, 2002, the applicant was convicted of making false statements to a federal agency. On July 20, 2005, as a result of these convictions, the applicant was removed from the United States. On October 4, 2010, the applicant was paroled in to the United States as a public interest parolee. On May 9, 2012, the applicant submitted an adjustment application (Form I-485) based on an approved Alien Relative Petition (Form I-130).

Section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (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 5 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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> > ...
> >
> > (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 has consented to the alien's reapplying for admission.

In accordance with the field office director's decision, dated July 11, 2013, we find that the applicant requires permission to reapply for admission as someone who was convicted of an aggravated felony, illicit trafficking in a controlled substance, as defined under section 101(a)(43)(B) of the Act. In addition, we affirm the field office director's decision that no purpose would be served in granting the applicant's application for permission to reapply for admission because the applicant is inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), for being a controlled substance trafficker, with no ability to be granted a waiver of this inadmissibility. 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. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964). As the applicant is inadmissible under section 212(a)(2)(C) of the Act no purpose would be served in granting the applicant's Form I-212.

On appeal, counsel submits documentation from Portugal and indicates that these documents show that the applicant does not have a narcotics trafficking conviction.

Section 212(a)(2) of the Act provides, in pertinent part, that:

> (A) Conviction of certain crimes.-
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> > (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-
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> > > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
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> > > (II) a violation of (or a 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.
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> . . .
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> (C) Controlled Substance Traffickers - Any alien who the consular officer or the Attorney General knows or has reason to believe--
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> > (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.

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

> (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) 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 -
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> . . .
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> (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 [now the Secretary of

> Homeland Security (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 . . . .

A fingerprint check updated on June 20, 2012, indicated that on May 1, 1987, the applicant was arrested in Portugal and charged with trafficking drugs, specifically one kilogram of cocaine. On October 18, 1988, the applicant was sentenced to 9 years imprisonment and expulsion from the country for 25 years. Counsel asserts in his brief that the applicant was not convicted of narcotics trafficking in Portugal and submits a criminal clearance certificate for the applicant. We note that this document is of no consequence to the applicant's case, because Citizenship and Immigration Services records indicate that the applicant was convicted in Portugal under his twin brother's name, . As stated above, the applicant's true criminal record was not revealed until a fingerprint check was completed. We also note that on June 7, 2005, an immigration judge in Miami, Florida ordered the applicant removed indicating that the applicant had been convicted of narcotics trafficking. Thus, the record indicates that the applicant was convicted as a controlled substance trafficker.

In order for an applicant to be inadmissible under section 212(a)(2)(C) of the Act, the only requirement is that an immigration officer "knows or has reason to believe" that the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled, or endeavored to do so. *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9th Cir. 2000). In order for an immigration officer to have sufficient "reason to believe" that an applicant has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by "reasonable, substantial, and probative evidence." *Id.* (citing *Hamid v. INS,* 538 F.2d 1389, 1390-91 (9th Cir.1976)).

In the present matter, a fingerprint background check revealed that the applicant had been convicted of trafficking one kilogram of cocaine. Thus, the record supports that the applicant is inadmissible under section 212(a)(2)(C)(i) of the Act, as there is "reason to believe" that the applicant has been an illicit trafficker in a controlled substance.

We note that an applicant may be deemed inadmissible under section 212(a)(2)(C)(i) of the Act even where there has been no admission and no conviction, so long as there is "reason to believe" that the applicant engaged in the proscribed conduct relating to trafficking in a controlled substance. In the present matter, there is reason to believe that the applicant has been an illicit trafficker in a controlled substance. Specifically, there is reasonable, substantial, and probative evidence to support the belief that he has been an illicit trafficker in a controlled substance. *See Alarcon-Serrano v. I.N.S.* at 1119.

Based on the foregoing, we find that there is sufficient reason to believe that the applicant has been an illicit trafficker in a controlled substance, and he is inadmissible under section 212(a)(2)(C)(i) of the Act. There is no provision under the Act that allows for waiver of inadmissibility under section 212(a)(2)(C)(i) of the Act.

Thus, although the applicant no longer requires permission to reapply for admission, he remains inadmissible to the United States and there is no waiver available for the applicant's inadmissibility under section 212(a)(2)(C)(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant no longer requires the benefit sought. Accordingly, the appeal will be dismissed and the application is unnecessary.

ORDER: The appeal is dismissed.