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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: JUN 2 4 2014

Office: U.S. CUSTOMS AND BORDER PROTECTION ADMISSIBILITY REVIEW OFFICE

FILE: [redacted]

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 (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 Director, Admissibility Review Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Laos and citizen of Canada who is inadmissible for being convicted of a crime involving moral turpitude and a crime related to a controlled substance under sections 212(a)(2)(A)(i)(I) and (II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I) and (II). The applicant is also inadmissible under section 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i) for having been a controlled substance trafficker. The applicant was ordered removed from the United States on October 21, 2005. The applicant is inadmissible 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 visit the United States.

In a decision, dated November 18, 2013, the director found that the applicant's reasons for wanting to enter the United States did not outweigh the many adverse factors in his case. The Form I-212 was denied accordingly.

On appeal, the applicant submits a statement from himself and a statement from his wife. The applicant states that he has been rehabilitated and would like the opportunity to visit the United States for family vacations.

The record includes: three character reference letters, a statement from the applicant, a statement from the applicant's spouse, a negative drug screening, and an employment verification letter.

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 on June 15, 2003, the applicant entered the United States as a visitor. On October 20, 2005, in the U.S. District Court, District of Hawaii, the applicant was convicted of possession with the intent to distribute over 500 grams of crystal methamphetamine. The applicant was sentenced to 28 months imprisonment and five years probation. He was ordered removed from the United States on October 21, 2005. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The record further reflects that the applicant has no other criminal record since his return to Canada, is now married, is employed, and is an active volunteer in his community. He states that he regrets his past actions and would like the opportunity to visit the United States for vacations and to visit family in Indiana.

In *Matter of Tin,* 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

> The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

The favorable factors in the applicant's case include his lack of any criminal record since 2005, his volunteer work with his community, his employment, and the presence of family members in the United States.

The unfavorable factor in this case includes the applicant's criminal record of trafficking in narcotics.

Given the seriousness of the applicant's criminal actions and the lack of evidence regarding the applicant's rehabilitation, the record does not indicate that the favorable factors in the applicant's case outweigh the unfavorable. The applicant's reasons for visiting the United States weighed against the seriousness of his conviction indicate that a favorable exercise of discretion is not currently warranted.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.