

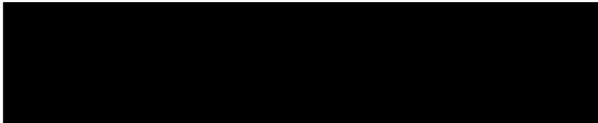
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: NOV 02 2011

Office: PHOENIX

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 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,


for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of Mexico who, on August 26, 1988, was deported from the United States as an alien who had been convicted of a drug crime. The record reflects that the applicant reentered the United States on or about October 1988, without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326. On or about February 16, 1995, the applicant was apprehended and placed in deportation proceedings. On December 14, 1995, an Immigration Judge ordered the applicant deported from the United States and the applicant was required to report for deportation to Mexico on July 1, 1997, but failed to appear. The applicant was then apprehended and deported on February 6, 2002. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He now 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 family.

In a decision, dated April 20, 2009, the field office director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly.

On appeal counsel submits a brief and additional evidence regarding the favorable factors in the applicant's case and the mitigating circumstances surrounding the unfavorable factors in the applicant's case.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

.....

(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 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 continuous territory, the

Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

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 record indicates that on January 7, 1986 in Reno, Nevada, the applicant was convicted of trafficking in a controlled substance and the unlawful sale and supply of a controlled substance. The applicant's deportation record indicates that this controlled substance was heroin. The applicant is subject to the provisions of section 212(a)(2)(A) and section 212(a)(2)(C) of the Act as a person convicted of violating a law related to a controlled substance and as a controlled substance trafficker. No waiver is available to an alien who has been convicted of an offense involving heroin or who there is reason to believe engaged in drug trafficking. 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 Form I-212 was properly denied by the field office director.

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 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.