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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUN 26 2008

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after deportation or removal was denied by the Director, California Service Center, and 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 was ordered excluded from the United States on October 3, 1989. The applicant was removed on October 4, 1989. The applicant was removed to Mexico pursuant to section 237 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227. The record reflects that the applicant reentered the United States in or around 1991 without a lawful admission or parole. The record indicates that the applicant was found to be inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). The applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II) for violating a law related to a controlled substance and 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i) for illicit trafficking of a controlled substance. 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 remain in the United States.

The director determined that the applicant is not eligible for any exceptions or waivers due to his inadmissibility under sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C)(i) of the Act, and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *Director's Decision*, dated January 31, 2007.

On appeal, the applicant details his positive equities, such as lack of a criminal record since 1989 and volunteer work. *Statement in Support of Appeal*, dated February 12, 2007.

The record reflects that the applicant was convicted on July 19, 1989 of possession of a controlled substance (49.95 lbs (22.66 kilograms of marijuana)) in violation of 21 U.S.C. § 844(a). As such, he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act which states in pertinent part, that:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(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... is inadmissible.

In addition, the record reflects that there is reason to believe that the applicant was involved in the trafficking of a controlled substance (49.95 lbs (22.66 kilograms of marijuana)). The record reflects that the applicant was driving a vehicle with the aforementioned marijuana located in a specially constructed compartment, the applicant knew there were narcotics in the vehicle and he was paid to drive the vehicle from Tijuana to Los Angeles. *Memorandum of Investigation*, dated April 11, 1989. As such, he is also inadmissible under section 212(a)(2)(C) of the Act.

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

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 notes that there is no waiver available to the applicant under sections 212(a)(2)(A)(i)(II) or (C)(i) of the Act.¹ *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 applicant is subject to the provisions of sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C)(i) of the Act. No waiver is available to the applicant under these sections of the Act. 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 director.

ORDER: The appeal is dismissed.

¹ The AAO notes that section 212(h) of the Act provides a waiver of section 212(a)(2)(A)(i)(II) of the Act as it relates to a single offense of simple possession of 30 grams or less of marijuana, however, section 212(h) of the Act is inapplicable to the applicant.