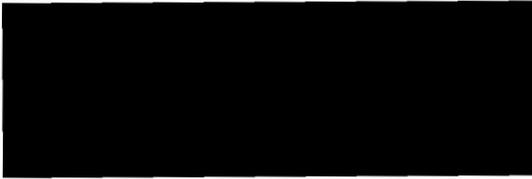




U.S. Citizenship  
and Immigration  
Services

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FILE:  Office: CALIFORNIA SERVICE CENTER Date: DEC 19 2006

IN RE: Applicant: 

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The Director's decision will be withdrawn, the appeal will be dismissed and the application declared unnecessary.

The applicant is a native and citizen of Mexico who was admitted into the United States as a Lawful Permanent Resident (LPR) on September 27, 1968. The applicant departed the United States on an unknown date and on May 2, 1978, he applied for admission as a returning permanent resident. The applicant was arrested and charged with attempting to smuggle 50 bags of amphetamines into the United States. On July 24, 1978, in the United States District Court of the District of Arizona, the applicant was convicted of the offense of smuggling goods into the United States in violation of title 18 U.S.C. section 545. The applicant was sentenced to four years imprisonment. The applicant was placed in exclusion proceedings and, consequently, on October 10, 1979, he was deported from the United States. The record reflects that the applicant reentered the United States on or about May 3, 1982, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). On May 5, 1982, in the United States Magistrate, El Centro, California, the applicant was convicted pursuant to title 8 U.S.C. § 1325 for knowingly, willfully and unlawfully entering the United States at a time or place not designated by immigration officers. He was sentenced to 60 days imprisonment. On July 1, 1982, an Order to Show Cause (OSC) for a deportation hearing before an immigration judge was served on him. On September 7, 1983, an immigration judge found the applicant deportable pursuant to section 241(a)(2) of the Immigration and Nationality Act (the Act), for entering the United States without inspection and granted him voluntary departure until December 7, 1983, in lieu of deportation. The applicant failed to surrender for removal or depart from the United States. The applicant's failure to depart on or prior to December 7, 1983, changed the voluntary departure order to an order of deportation. On March 12, 1985, a Warrant of Deportation (Form I-205) was issued. Consequently, on March 30, 1985, the applicant was deported to Mexico. The applicant filed a Form I-212, which was denied on July 22, 1985. An appeal filed with the AAO was dismissed on August 30, 1985, because the applicant was found to be inadmissible pursuant to section 212(a)(23)<sup>1</sup> of the Act, for having reasonable grounds to believe that he was involved in the illicit trafficking of a controlled substance. On May 5, 1986, the AAO reopened the case, *sua sponte*, found that the applicant was not excludable pursuant to section 212(a)(23) of the Act, withdrew its August 30, 1985, decision and remanded the case to the District Director. The applicant filed a new Form I-212 on October 14, 2005. 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 travel to the United States and reside with his U.S. citizen spouse and children.

The Director determined that the applicant had been convicted of a crime involving moral turpitude and that there are reasonable grounds to believe that he was involved in the illicit trafficking of a controlled substance. The Director concluded that the applicant is not eligible for any exception or waiver under the Act and denied the Form I-212 accordingly. *See Director's Decision* dated January 4, 2006.

On appeal, the applicant states that he was not convicted of a controlled substance offense as stated in the decision. In addition, the applicant states that since the time of his deportation to Mexico, he has been working steadily and he submitted several letters of recommendation with the filing of his Form I-212.

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<sup>1</sup> Now section 212(a)(2)(C) of the Act

Additionally, he states that his spouse has medical problems and requests that he be given the opportunity to reside with his family in the United States.

The AAO finds that the Director erred in finding that the applicant is not eligible for any exception or waiver under the Act because he was involved in the illicit trafficking of a controlled substance. The record of proceeding contains a Report of Investigation issued by the Department of the Treasury, Bureau of Customs, on August 30, 1978, which states that laboratory analysis of the seized pills revealed them to be caffeine and ephedrine. Neither caffeine nor ephedrine appear on the schedule of controlled substances in 21 C.F.R. part 1308. As noted above, the applicant was convicted of smuggling goods into the United States pursuant to title 18 U.S.C. section 545, and not trafficking of a controlled substance. In addition, on August 30, 1985, the AAO concluded that the applicant was not excludable pursuant to section 212(a)(23) of the Act as an illicit trafficker. Consequently, this office finds that the applicant was not involved in the illicit trafficking of a controlled substance and, therefore, he is eligible to apply for waivers under the Act.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens 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 contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act.

To recapitulate, the applicant was deported from the United States for a second time on March 30, 1985. The record of proceeding does not reflect that the applicant re-entered or attempted to reenter the United States after his deportation. The applicant states that he resides in Mexico and there is no documentary evidence to show otherwise. It has now been more than twenty years since the applicant's date of deportation. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act. Accordingly, the appeal will be dismissed and the Form I-212 will be declared unnecessary, as it has been established that the applicant is no longer inadmissible under section 212(a)(9)(A)(ii) of the Act.

The AAO notes that the applicant remains inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of a crime involving moral turpitude. Pursuant to the regulation at 8 C.F.R § 212.7(a)(1)(i), the applicant must file an Application for Waiver of Grounds of Inadmissibility (Form I-601) with the American Consulate that has jurisdiction over his place of residence.

**ORDER:** The District Director's decision is withdrawn, the appeal is dismissed and the application declared unnecessary.