

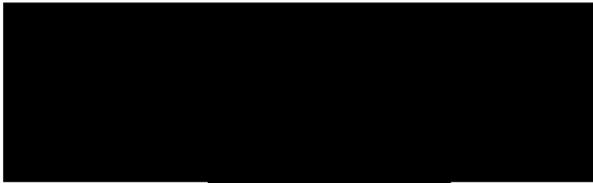


U.S. Citizenship
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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: APR 26 2007

IN RE:



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 Director, California Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it 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, on August 28, 1989, was admitted to the United States as a lawful permanent resident. On February 24, 1997, the applicant was convicted of attempted possession of marijuana for sale with a weight of at least two pounds in violation of section 13-3405 of the Arizona Revised Statutes (ARS). The applicant was sentenced to 2½ years in jail. On May 6, 1997, the applicant was placed into proceedings. On November 12, 1997, the immigration judge ordered the applicant removed. On January 12, 1998, the applicant was removed from the United States and returned to Mexico. Immigration officers apprehended the applicant after he had reentered the United States without inspection. On February 19, 1998, the applicant's prior removal order was reinstated. On March 23, 1999, the applicant was removed from the United States to Mexico where he has since resided. On June 15, 2005, the applicant filed the Form I-212. The applicant is inadmissible pursuant to sections 212(a)(9)(A) and 212(a)(9)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(A) and 1182(a)(9)(C) for seeking admission within ten years of departing the United States after being ordered removed and for unlawful entry into the United States after having been removed. The applicant 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 return to the United States to either reside with or visit his U.S. citizen children.

The director determined that the applicant was inadmissible pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, 8 U.S.C. §§ 1182(a)(2)(A)(i)(II) and 1182(a)(2)(C), for having been convicted of a controlled substance violation that is not simple possession of marijuana less than 30 grams and for having endeavored to be an illicit trafficker of a controlled substance. The director also determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The director denied the Form I-212 accordingly. *See Director's Decision* dated May 31, 2006.

On appeal, the applicant's U.S. citizen children contend that he is a good father who has served time for the crimes he has committed and who only reentered the United States after having been removed because his son had sustained a serious injury to his spinal cord. *See Affidavits in Support of Appeal*, dated June 21, 2006. In support of the appeal, the applicant submitted only the affidavits from his children. The entire record was reviewed in rendering a decision in this case.

Section 101(43) of the Act states in pertinent part:

(43) The term "aggravated felony" means-

....

(B) illicit trafficking in a controlled substance . . .

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

(1) Criminal and related grounds. —

(A) Conviction of certain crimes. —

(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 –

(II) a violation of (or 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. (emphasis added.)

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

The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or 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* (emphasis added.)

....

No waiver shall be provided under this subsection in the case of . . . an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if . . . since the date of such admission the alien has been convicted of an aggravated felony . . .

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. The AAO finds that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act for having been convicted of attempted possession of marijuana for sale in the amount of more than two pounds, a violation related to a controlled substance.

The Act makes it very clear that the section 212(h) waiver applies only to controlled substance cases that involve a single offense of *possession* of 30 grams or less of marijuana. In this case, the applicant was convicted of attempted possession of marijuana for sale, i.e., trafficking. The AAO also finds that the applicant in the instant case is not eligible for a waiver under section 212(h) of the Act because he was convicted of illicit trafficking, an aggravated felony, after he had been admitted to the United States as a lawful permanent resident.

Section 212(a)(2)(C) provides:

CONTROLLED SUBSTANCE TRAFFICKERS- 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 finds that the applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act, for having been convicted of attempted possession of marijuana for sale in the amount of more than two pounds, a violation reflecting his endeavor to be an illicit trafficker of a controlled substance, a ground for which there is no waiver available.

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) of the Act, which are very specific and applicable. No waiver is available to an alien who has been convicted of more than simple possession of marijuana greater than 30 grams of marijuana. No waiver is available to an alien who is a trafficker in any controlled substance. 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 appeal will be dismissed.

ORDER: The appeal is dismissed.