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U.S. Citizenship and Immigration Services

PUBLIC COPY

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JUN 07 2007

FILE: [redacted] Office: HARLINGEN, TX Date:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Harlingen, Texas, 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 February 5, 1982, was admitted to the United States as a lawful permanent resident. On May 9, 1996, the applicant pled guilty to and was convicted of a felony charge of delivery of marijuana in an amount greater than 5 pounds but less than 50 pounds. The applicant was sentenced to two years in jail. On October 28, 1996, immigration officers encountered the applicant during his incarceration. On October 30, 1996, the applicant was placed into proceedings. On November 26, 1996, the immigration judge ordered the applicant removed from the United States pursuant to sections 241(a)(2)(B)(i) and 241(a)(2)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1231(a)(2)(B)(i) and 1231(a)(2)(A)(iii), as a lawful permanent resident who, after admission to the United States, has been convicted of a violation of a law related to a controlled substance other than a single offense involving possession for one's own use of 30 grams or less of marijuana, and has been convicted of an aggravated felony as defined in section 101(a)(43) of the Act. On September 3, 1997, the applicant was removed from the United States and returned to Mexico. On July 1, 2005, the applicant filed the Form I-212. The applicant was found inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) for being an alien convicted of an aggravated felony seeking admission within twenty years of departing the United States after being 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 and reside with his U.S. citizen spouse and U.S. citizen children.

The district director determined that the applicant did not warrant a favorable exercise of discretion because he was convicted of felony charges for which there is no waiver available. The district director denied the Form I-212 accordingly. *See District Director's Decision* dated January 24, 2006.

On appeal, the applicant contends that he has only been convicted of one felony and he has paid his dues for this mistake. The applicant contends that he deserves to be reunited with his family because he has not had any trouble with authorities in the United States or Mexico and he does not pose a risk to the United States. *See Form I-290B,* submitted February 23, 2006. In support of the appeal, the applicant submits only the Form I-290B. 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.

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 delivery of marijuana in an amount more than 5 pounds but less than 50 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 delivery of marijuana, i.e. trafficking. The AAO also finds that the applicant in the instant case does not qualify 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

Accordingly, the AAO also finds that the applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act, for having been convicted of delivery of marijuana in the amount of more than 5 pounds but less than 50 pounds, a violation reflecting his activity as 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. No waiver is available to an alien who has been convicted of more than simple possession of marijuana in excess of 30 grams. No waiver is available to an alien who after being admitted to the United States as a lawful permanent resident has been convicted of a violation related to a controlled substance that is an aggravated felony. No waiver is available to an alien who is a trafficker in any controlled substance. As the applicant is statutorily inadmissible to the United States, 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.