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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] Office: HARLINGEN, TEXAS Date: MAR 05 2007

IN RE: Applicant: [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.

Ellen C. Johnson

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 District Director, Harlingen, Texas, 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 on June 9, 1997, in the 20th Judicial Circuit Court, Grand Haven, Michigan, was convicted of the offense of Delivery/Manufacture of Marijuana. On June 26, 1997, a Notice to Appear (NTA) for a hearing before an immigration judge was served on him. On July 24, 1997, an immigration judge ordered the applicant removed from the United States pursuant to section 237(a)(2)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(B)(i), for having been convicted of a violation of any law or regulation relating to a controlled substance, and section 237(a)(2)(A)(iii) of the Act, for having been convicted of an aggravated felony at any time after admission. Consequently, on September 18, 1997, the applicant was removed from the United States. The record reflects that on September 20, 1997, at the Hidalgo, Texas, Port of Entry, the applicant orally represented himself to be a citizen of the United States in order to gain admission into the United States. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), as an alien who falsely represents himself to be a citizen of the United States for any purpose or benefit under the Act. Consequently, on the same date, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant is inadmissible to the United States pursuant to 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 remain in the United States and reside with his U.S. citizen spouse and children.

The District Director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a violation of any law or regulation relating to a controlled substance, section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), for having reasonable grounds to believe that he was involved in the illicit trafficking of a controlled substance and section 212(a)(6)(C)(ii) of the Act, for having falsely represented himself to be a citizen of the United States. The District Director concluded that the applicant is not eligible for any exception or waiver under the Act and denied the Form I-212 accordingly. *See District Director's Decision* dated August 26, 2004.

The AAO notes that the Texas Service Center denied a previously filed Form I-212 on June 26, 1998. No appeal had been filed on that denial.

On appeal, the applicant states that when he was arrested for signing a package that contained marijuana, he did not know what was in the package. In addition, the applicant states that he did not have the money to hire a defense attorney. The applicant further states that the circumstances for which he was charged were circumstantial and states that he had never before been in trouble. Finally, the applicant states that his spouse and children need him in the United States.

The AAO does not have jurisdiction over the applicant's arrest or conviction. The fact remains that the applicant was convicted for Delivery/Manufacture of marijuana and, therefore, he is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act. In addition, the circumstances surrounding the applicant's arrest, and the quantity of the controlled substance involved, provided reasonable grounds to

believe that the applicant was involved in the trafficking of a controlled substance and the District Director found him inadmissible under section 212(a)(2)(C) of the Act. Furthermore, the applicant is clearly inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act.

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

> (A) Certain aliens previously removed.-
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> . . .
>
> (ii) Other aliens.- Any alien not described in clause (i) who-
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> (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.

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

> (A)(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 (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802).
>
> . . .
>
> (C) Controlled substance traffickers.-
>
> any aliens who the consular officer of the Secretary knows or has reasons 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; or . . . is inadmissible.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (ii) Falsely claiming citizenship -
>
> > (I) In general- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.
> >
> > (II) Exception- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

No waiver of the ground of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act is available to an alien found inadmissible under this section except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception. In addition, there is no waiver available under section 212(a)(2)(C) of the Act. Finally, the applicant does not qualify for the exception under section 212(a)(6)(C)(ii)(II) of the Act.

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.

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. The applicant, in the present case, is not eligible for any relief under the Act and, accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.