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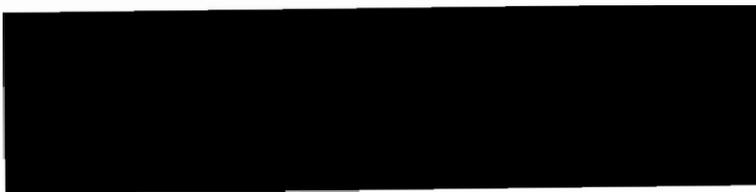
U.S. Department of Homeland Security  
20 Massachusetts Avenue, N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE:



Office: EL PASO, TEXAS

Date: **AUG 18 2008**

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) of the Immigration and Nationality  
Act, 8 U.S.C. § 1182(a)(9)(A)

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 after removal was denied by the District Director, El Paso, 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 initially entered the United States without inspection in April 1985. On December 2, 1986, the applicant was convicted of unlawful possession of a controlled substance (Cocaine) with intent to deliver, and was sentenced to twelve (12) months plus one (1) day in prison. On April 16, 1987, an Order to Show Cause (OSC) was issued against the applicant. On July 7, 1987, an immigration judge ordered the applicant deported from the United States, a Warrant of Deportation (Form I-205) was issued, and the applicant was deported to Mexico. On November 22, 1993, the applicant attempted to reenter the United States without inspection. On the same day, an OSC was issued against the applicant. On December 2, 1993, an immigration judge ordered the applicant deported from the United States, a Form I-205 was issued, and the applicant was deported to Mexico. The applicant is inadmissible to the United States under sections 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), and 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I). 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 legally return to the United States.

The District Director determined that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for violating any law or regulation relating to a controlled substance, and he denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *District Director's Decision*, dated June 19, 2006.

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

(A) Conviction of certain crimes. -

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

(I) a crime involving moral turpitude...or an attempt or conspiracy to commit such a crime, or

(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)),

is inadmissible.



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

(h) The [Secretary, Department of Homeland Security] 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.)

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the [Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

On appeal, the applicant requests a pardon from his mistakes and claims that he has been rehabilitated. *Attachment to Form I-290B*, filed July 20, 2006. The AAO notes that the applicant has attempted to demonstrate remorse for his criminal activities; however, the applicant has been convicted of being in possession of a controlled substance, which is an aggravated felony, and he is statutorily ineligible for any waivers of inadmissibility.

Since the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for violating any law relating to a controlled substance, in order for him to qualify for a waiver pursuant to section 212(h) of the Act, he must have been convicted of only a single offense of simple possession of 30 grams or less of marijuana. The applicant was not convicted of a single offense of simple possession of 30 grams or less of marijuana and there is no waiver of the applicant's ground of inadmissibility. The applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act; and, therefore, he is statutorily ineligible for a waiver of inadmissibility.

*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 section 212(h) of the Act. No waiver is available to an alien who has been convicted of drug related crimes; 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 District Director.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.