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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 22 2008

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 Acting Director, Vermont 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 the Dominican Republic who, on December 13, 1975, was admitted to the United States as a lawful permanent resident. On August 4, 1986, the applicant was convicted of criminal possession of a controlled substance in violation of section 220.03 of the New York Penal Law (NYPL). The applicant was sentenced to time served. On September 10, 1986, the applicant was convicted of criminal sale of a controlled substance in violation of section 220.39 of the NYPL. The applicant was sentenced to one year in jail. On July 15, 1987, the applicant was convicted of criminal possession of a controlled substance in violation of section 220.03 of the NYPL. The applicant was sentenced to time served. On August 25, 1987, the applicant was convicted of criminal possession of a controlled substance in violation of section 220.03 of the NYPL. The applicant was sentenced to time served. On November 27, 1987, the applicant was convicted criminal possession of a controlled substance in violation of section 220.03 of the NYPL. The applicant was sentenced to time served. On July 24, 1989, the applicant was convicted of criminal sale of a controlled substance, to wit cocaine, in violation of section 220.31 of the NYPL. The applicant was sentenced to two to four years in jail. On May 11, 1990, the applicant was placed into proceedings. On May 17, 1990, the applicant was paroled. On November 19, 1990, the immigration judge ordered the applicant removed from the United States for having been convicted of an aggravated felony, i.e. drug trafficking, and a violation of any law or regulation related to a controlled substance. On November 28, 1990, the applicant was removed from the United States and returned to the Dominican Republic. On February 7, 2001, the applicant filed the Form I-212. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii) as an alien convicted of an aggravated felony who seeks admission to the United States at any time after being removed. The applicant requests 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 as a lawful permanent resident and reside with his mother.

The acting director determined that the applicant was ineligible for relief under section 212(h) of the Act as a lawful permanent resident convicted of an aggravated felony. The acting director also found that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Acting Director's Decision* dated January 4, 2007.

On appeal, the applicant's mother, [redacted] contends that the applicant was addicted to drugs at the time of his convictions and was not responsible for his actions. She states that he has become a productive individual who should be given a second chance. *See Attachment to Form I-290B,* received February 6, 2007. In support of her contentions, [redacted] submits the referenced attachment; a letter from the applicant; police and judicial clearance letters from the Dominican Republic; documentation of the applicant's employment, education and civic participation; a letter of support from the applicant's sister; and a letter of recommendation written by a Catholic priest who resides in the same city as the applicant. The entire record was reviewed in rendering a decision in this case.

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

(A) Certain aliens previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years 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.

(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 who 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. [emphasis added]

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.

Section 101(a)(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.)
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> 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 . . . .

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 four counts of criminal possession and two counts of criminal sale of a controlled substance, violations related to a controlled substance.

The Act makes it clear that a section 212(h) waiver is available only for controlled substance convictions that involve a *single* offense of *possession* of 30 grams or less of marijuana. In this case, the applicant was convicted of criminal possession in more than one instance and of criminal sale of a controlled substance in more than one instance and is ineligible for waiver consideration. Additionally, 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 criminal sale of a controlled substance on two occasions, aggravated felonies under section 101(a)(43) of the Act, 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.

Finally, the AAO also finds that the applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act, for having been convicted of criminal sale of a controlled substance on two occasions, reflecting involvement in the illicit trafficking of a controlled substance. No waiver is available to individuals found inadmissible under section 212(a)(2)(C) 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.

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 a controlled substance violation, other than simple possession of marijuana in an amount less than 30 grams. No waiver is available to a former lawful permanent resident who has been convicted of an aggravated felony after having been admitted to the United States for permanent residence. 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 as a matter of discretion.

ORDER: The appeal is dismissed.