

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



H4

FILE:



Office: CALIFORNIA SERVICE CENTER
[consolidated therein]

Date: JUL 29 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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant was never removed and does not require permission to reapply for admission after removal..

The AAO notes that on appeal, the applicant requested 33-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed March 5, 2007. The record contains no evidence that a brief or additional evidence was filed within 33-days. Therefore, the record is considered complete.

The applicant is a native and citizen of Mexico who entered the United States without inspection on January 1, 1981. On December 28, 1984, the applicant was arrested in Anaheim, California, for selling/furnishing marijuana/hashish. On April 22, 1985, the applicant was convicted of Sale or Transportation of Marijuana, in violation of California Health and Safety Code § 11360(a), and was sentenced to twenty-seven (27) days in jail and thirty-six (36) months probation. On January 3, 1985, the applicant was arrested in Santa Ana, California, for selling/furnishing marijuana/hashish. On April 30, 2001, the applicant's daughter, a United States citizen, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was denied on September 20, 2004. 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)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C). She 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 reside with her children.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), for being convicted of a controlled substance trafficking offense, and 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 that she was statutorily ineligible for a waiver under section 212(h) of the Act. The Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated January 31, 2007.

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 Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

The record contains no indication that the applicant has ever been ordered removed from the United States; therefore, she is not inadmissible under section 212(a)(9)(A) of the Act and was not required to file a Form I-212 to request permission to reenter the United States.

However, the AAO finds that 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), and section 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i), for her conviction of sale or transportation of marijuana.

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

(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(a)(2). Criminal and related grounds.-

(C) Controlled substance traffickers.-

Any alien who the consular officer or the Attorney General [now, Secretary, Department of Homeland Security] knows or has reason to believe-

(i) is or has been an illicit trafficker in any controlled substance...

. . . .

is inadmissible.

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

(h) The Attorney General [Secretary 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.)

In order for the applicant to qualify for a waiver pursuant to section 212(h) of the Act, she must have been convicted of only a single offense of simple possession of 30 grams or less of marijuana. The applicant was convicted of sale of marijuana, not simple possession, therefore, no waiver is available.

The applicant was never removed from the United States and therefore, the Form I-212 is unnecessary. However, based on her conviction of sale of marijuana she remains permanently inadmissible to the United States.

ORDER: The appeal is dismissed.