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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: NOV 06 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 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 Afghanistan who, on September 30, 1982, was admitted to the United States as a refugee. On September 30, 1984, the applicant became a lawful permanent resident. On March 19, 1989, the applicant was convicted of carrying a firearm, in violation of section 6108 of Title 18 of the Pennsylvania Consolidated Statutes (PCS). The applicant was sentenced to one year of probation. On May 19, 1997, the applicant was convicted of altered, forged or counterfeit documents and plates in violation of section 7122 of Title 75 of the PCS. The applicant was sentenced to two to twenty-three months in jail. On November 10, 1997, the applicant was placed into immigration proceedings. On December 2, 1997, the Notice to Appear (NTA) was amended. On March 10, 1998, the immigration judge ordered the applicant removed *in absentia*. The applicant filed a motion to reopen with the immigration judge, which was granted. The applicant filed an Application for Asylum and Withholding of Removal (Form I-589) with the immigration court. On October 18, 1999, the applicant's naturalized U.S. citizen father filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On March 9, 2000, the immigration judge denied the applicant's application for asylum and withholding of removal and ordered him removed from the United States pursuant to sections 237(a)(2)(A)(iii) and 237(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1227(a)(2)(A)(iii) and 1227(a)(2)(C), for having been convicted of an aggravated felony and being convicted of using a firearm in violation of any law. The applicant filed a second motion to reopen with the immigration judge, which was granted. On September 26, 2000, the immigration judge denied the applicant's applications for asylum, withholding of removal, adjustment of status and a section 212(h) waiver, but granted the applicant relief under the convention against torture. Immigration and Customs Enforcement (ICE) appealed the decision to the Board of Immigration Appeals (BIA). On May 21, 2002, the BIA found that the applicant no longer warranted relief under the convention against torture and ordered him removed from the United States. On May 21, 2002, a warrant for the applicant's removal was issued. The applicant filed a motion to reopen with the BIA. On February 21, 2003, the applicant was removed from the United States and returned to Afghanistan. The applicant has since remained outside the United States. On April 1, 2003, the BIA denied the applicant's motion to reopen. On April 1, 2005, the Form I-130 was denied. On March 27, 2006, 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 after being ordered 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 reside in the United States with his U.S. citizen father.

The director determined that the applicant was inadmissible pursuant to section 212(a)(9)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i)(II), for having been convicted of an aggravated felony. The director found that the applicant was mandatorily inadmissible and denied the Form I-212 accordingly. *See Director's Decision* dated May 4, 2007.

On appeal, the applicant contends that the immigration judge's order of removal is invalid and fundamentally unfair. The applicant also contends that he was not convicted of an aggravated felony. *See Applicant's Brief,* dated June 8, 2007. In support of his contentions the applicant submits the referenced brief, copies of conviction records and police reports, copies of the PCS, copies of photographs and copies of documentation previously provided or in the record. 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]

Section 101(a)(43) of the Act states in pertinent part:

(43) The term "aggravated felony" means-

. . . .

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year . . .

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 . . . 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) . . . of subsection (a)(2) . . . if –
>
> . . . .
>
> 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 . . .

Title 75, section 7122 of the PCS states, in pertinent part:

> A person is guilty of a misdemeanor in the first degree if the person, with fraudulent intent:
> (1) alters, forges, or counterfeits a certificate of title, registration card or plate, inspection certificate or proof of insurance;
> (2) alters or forges an assignment of a certificate of title, or an assignment or release of a security interest on a certificate of title or any other document issued or prepared for issue by the department;
> (3) has possession of, sells or attempts to sell, uses or displays a certificate of title, registration card or plate, driver's license, inspection certificate proof of insurance or any other document issued by the department, knowing it to have been altered, forged, or counterfeited

While the AAO notes the applicant's assertion on appeal that his removal from the United States was invalid because he was not convicted of an aggravated felony, the only issue before the AAO is whether the applicant, who was physically removed from the United States in 2003 and is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, is eligible for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act. The AAO also notes that the applicant did not dispute his removability as a lawful permanent resident convicted of aggravated felony at any time during his immigration hearing, the subsequent appeal or the motion to reopen.

While the applicant asserts that he was convicted of multiple offenses on May 19, 1997, the Pennsylvania Commission Guidance on Sentencing Guidelines Form in the record of conviction reflects that the applicant pled guilty to violating Title 75, section 7122 of the PCS, for which he was sentenced to two to twenty-three months of incarceration. The AAO notes that the applicant asserts that he was sentenced to only two months in jail and twenty-three months of probation. However, the conviction record reflects that the applicant was sentenced to two to twenty-three months in jail, for which the applicant was given credit for time served and then released on probation. The BIA considers the maximum term of imprisonment to be the sentence when a sentence is indeterminate. *Matter of S-S-*, 21 I&N Dec. 900 (BIA 1997); *Matter of D-*, 20 I&N Dec. 827 (BIA 1994). In the applicant's case, the sentence of 23 months, which was initially imposed, and not the actual time

served by the applicant, makes the applicant's conviction, an offense relating to counterfeiting and forgery, for which he was sentenced to more than one year. *See INA § 101(a)(48)(B).*

The applicant asserts that the police report establishes that he did not engage in behavior that constitutes a violation of Title 75, section 7122 of the PCS. This assertion is also unpersuasive. "[C]ollateral attacks upon an [applicant's] conviction do not operate to negate the finality of his conviction unless and until the conviction is overturned." *In Re Max Alejandro Madrigal-Calvo,* 21 I&N Dec. 323, 327 (BIA 1996) (citations omitted.) Moreover, this office cannot go behind the judicial record to determine the guilt or innocence of an alien. *See Id. and Matter of Khalik*, 17 I&N Dec. 518 (BIA 1980).

The AAO finds that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of altered, forged or counterfeit documents and plates, a crime involving moral turpitude.

The AAO further 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 altered, forged or counterfeit documents and plates, an aggravated felony, after he had been admitted to the United States as a lawful permanent resident.

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(a)(2)(A)(i)(I) of the Act, which are very specific and applicable. No waiver is available to him as he was convicted of an aggravated felony after having been admitted to the United States as a lawful permanent resident. 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.