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U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date SEP 10 200

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who was admitted to the United States as a lawful permanent resident on July 29, 1979. On July 22, 1992, the applicant was convicted of conspiracy to possess with intent to distribute cocaine, and was sentenced to three (3) years suspended sentence and five (5) years probation. On March 6, 1993, an immigration judge ordered the applicant deported from the United States. On April 12, 1993, a Warrant of Deportation (Form I-205) was issued against the applicant. On September 30, 1996, the applicant filed a motion to reopen the immigration judge's decision. On November 26, 1996, the applicant's motion to reopen was denied. On January 28, 1997, another Form I-205 was issued against the applicant. On February 3, 1997, the applicant was deported to Jamaica. 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 three United States citizen children and United States citizen parents.

The 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 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 April 25, 2007. Additionally, the applicant is inadmissible under 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)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), for being ordered removed from the United States.

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

(A) Certain alien previously removed.-

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(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.

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

(A) (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.

(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.

On appeal, the applicant states that since her arrest and conviction she has "nothing to do with [her] former spouse. It was in his pocket the police found the cocaine, it was not on [her]." *Letter attached to the Form I-290B*, dated May 21, 2007. The AAO notes that on November 27, 1991, the police conducted a search of the applicant's home and found 49.9 grams of crack cocaine, 60.1 grams of powdered cocaine, and a .38 caliber handgun. The applicant claims that she has never been arrested or convicted in Jamaica. *Id.* The AAO notes that there is no evidence in the record that the applicant has been arrested or convicted of any crimes in Jamaica; however, the applicant was convicted of being in possession of a controlled substance in the United States, which is an aggravated felony, and she is statutorily ineligible for any waivers of inadmissibility.

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.)

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), for conspiracy to possess with intent to distribute cocaine. 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. Since the applicant was not convicted of a single offense of simple possession of 30 grams or less of marijuana, there is no waiver of the applicant's ground of inadmissibility. The applicant is inadmissible under sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act, and; therefore, she is statutorily ineligible for a waiver of inadmissibility.

Additionally, eligibility for a waiver under section 212(h) is limited, in that:

....

No waiver shall be granted 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 either since the date of such admission the alien has been convicted of an aggravated felony...

The AAO notes that under section 101(a)(43)(B) of the Act, illicit trafficking in a controlled substance is an aggravated felony. Since the applicant was convicted of an aggravated felony after she was lawfully admitted for permanent residence to the United States, she is ineligible for a waiver under section 212(h) of the Act. Additionally, the applicant is statutorily ineligible for relief under section 212(h) based on her controlled substance conviction.

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 or 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, 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 Director.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she 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.