U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: Office: VERMONT SERVICE CENTER Date: DEC 03 2009

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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
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 the Philippines who, on December 29, 1999, was admitted to the United States as a lawful permanent resident. On October 20, 1999, the applicant was convicted of conspiracy to distribute greater than 1 kg of methamphetamine in violation of 21 U.S.C. § 841(a)(1)(A). The applicant was sentenced to twenty-eight months in jail and five years of probation. On March 1, 2001, the applicant was placed into immigration proceedings for being a lawful permanent resident removable as an aggravated felon and for having been convicted of a crime related to a controlled substance in violation of sections 237(a)(2)(A)(iii) and 237(a)(2)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1227(a)(2)(A)(iii) and 1227(a)(2)(B)(i). On June 19, 2001, the immigration judge ordered the applicant removed from the United States. On June 25, 2001, a warrant for the applicant's removal was issued. On July 25, 2001, the applicant was removed from the United States and returned to the Philippines.

On May 7, 2003, the applicant filed a Form I-212 indicating that he resided in the Philippines. On February 8, 2005, the Form I-212 was denied. On January 17, 2008, the applicant filed a second Form I-212 indicating that he resided in the United States.[1] The applicant is inadmissible indefinitely pursuant to section 212(a)(9)(A)(ii) the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having been convicted of an aggravated felony. 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 naturalized U.S. citizen spouse and two U.S. citizen children.

The director determined that the applicant was inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), and that there was no waiver available to the applicant under section 212(h) of the Act, 8 U.S.C. § 1182(h). The director determined that no purpose would be served in approving the application and denied the Form I-212 accordingly. *See Director's Decision* dated May 26, 2009.

On appeal, counsel contends that the director clearly and erroneously erred by not considering the evidence submitted. Counsel contends that the evidence established that the applicant has rehabilitated himself since his removal and warrants a finding of good moral character and that the continued separation from his U.S. family poses an extreme hardship to his spouse and children, one of whom has Hodgkin's disease. *See Counsel's Brief.* In support of his contentions, counsel submits only the referenced brief and copies of documentation already in the record. The entire record was reviewed in rendering a decision in this case.

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

> (A) Certain aliens previously removed.-

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[1] The AAO notes that counsel contends that the applicant resides in the Philippines and has not reentered the United States.

(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 on a 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 [Secretary of Homeland Security] has consented to the alien's reapplying for admission. [Emphasis added]

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver

The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

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

(43) The term "aggravated felony" means-

(B) illicit trafficking in a controlled substance . . . including a drug trafficking crime . . .

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*

. . . .

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 either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien*** from the United States . . . [emphasis added]

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 conspiracy to distribute greater than 1 kg of methamphetamine, a crime related to a controlled substance.

The Act makes it clear that a section 212(h) waiver is not available to an alien who has been convicted of a crime related to a controlled substance which is more than simple possession of 30g of marijuana. In this case, the applicant was convicted of conspiracy to distribute greater than 1 kg of methamphetamine, a crime related to a controlled substance more than simple possession of 30g or lessof marijuana.

The Act makes it clear that a section 212(h) waiver is not available to an alien who has been admitted as a lawful permanent resident if he or she has been convicted of an aggravated felony. In this case, the applicant, after he had been admitted to the United States as a lawful permanent resident, was convicted of an aggravated felony.

The Act makes it clear that a section 212(h) waiver is not available to an alien who had been admitted as a lawful permanent resident, if he or she has, since admission as a lawful permanent resident, not lawfully resided continuously in the United States for a period of at least seven years immediately preceding initiation of immigration proceedings. In this case, the applicant, after he had been admitted to the United States as a lawful permanent resident, had only continuously resided in the United States in a lawful capacity for less than three years prior to initiation of immigration proceedings on March 31, 1998. The applicant is, therefore, ineligible for waiver consideration on this ground as well.

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--
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> (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
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> . . . .
>
> is inadmissible

The AAO also finds that the applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act, because his conviction for conspiracy to distribute greater than 1 kg of methamphetamine, gives us reason to believe that the applicant has been involved 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 statutorily 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 crime related to a controlled substance if the crime is for more than simple possession of 30g or less of marijuana. No waiver is available to a lawful permanent resident who has been convicted of an aggravated felony. No waiver is available to a lawful permanent resident who has not continuously and lawfully resided in the United States for a period of at least seven years prior to initiation of immigration proceedings. No waiver is available for 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.