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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



FILE: [REDACTED] Office: PHOENIX, AZ Date: **AUG 16 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Phoenix, Arizona, 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 Mexico who, on September 26, 1996, appeared at the Andrade, California port of entry. The applicant presented her I-586 border crossing card. The applicant was accompanied by her daughter who was attending school in the United States. The applicant was referred to secondary inspection. During a search of the vehicle, 93.6 pounds of marijuana was discovered concealed in the trunk of the applicant's vehicle. The applicant failed to provide her true identity to immigration officers. The applicant was paroled into the United States for the sole purpose of prosecution. On March 5, 1997, the applicant pled guilty to and was convicted of importing marijuana and possession of marijuana with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1), 952 and 960. The applicant was sentenced to ten months in jail per count, to be served concurrently, and three years of probation. On July 29, 1997, the applicant was placed into immigration proceedings for having been convicted of a crime related to a controlled substance and for being involved in illicit trafficking of a controlled substance. On July 30, 1997, the immigration judge ordered the applicant removed from the United States. On July 31, 1997, the applicant was removed from the United States and was returned to Mexico under the name [REDACTED]

On October 30, 2002, the applicant appeared at the San Diego, California port of entry. The applicant presented a DSP-150 border crossing card under the name [REDACTED]. The applicant was placed into secondary inspection. The applicant admitted that, in applying for the DSP-150, she purposely did not answer the question in regard to previous arrests because she feared that she would not be issued a visa.¹ The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining a visa by fraud and attempting to enter the United States by fraud. On October 30, 2002, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1) as an aggravated felon.

On April 28, 2008, the applicant filed the Form I-212 indicating that she resided in the United States.² The applicant is permanently 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 shop locally in the United States.

The field office director determined that the applicant was removed from the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C), of the Act, 8 U.S.C. §§ 1182(a)(2)(A)(i)(II) and

¹ The AAO notes that the applicant, in applying for the DSP-150, provided her maiden name, which is different from the name under which she had been removed from the United States.

² The AAO notes that the applicant indicated that she was applying for permission to reapply for admission as a visitor; however, the record reflects that the Form I-212 and Form I-290B were both mailed from the United States and the applicant indicated that she resided in the United States. As such, the AAO has determined that the applicant has immigrant intent.

1182(a)(2)(C), for having been convicted of a crime relating to a controlled substance and for involvement in the illicit trafficking of a controlled substance. The field office director determined that the applicant was inadmissible pursuant to section 212(a)(2)(C) and that there is no waiver available for this ground of inadmissibility. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision* dated November 10, 2009.

On appeal, the applicant contends that she is not guilty of the crime of which she was convicted. The applicant contends that she was unaware that the attorney she had hired to obtain her new visa in 2002 had failed to reveal her prior history.³ *See Applicant's Letter*, dated December 8, 2009. In support of her contentions, the applicant submits only the referenced letter. 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.-

- (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 [Secretary of Homeland Security] has consented to the alien's reapplying for admission. [emphasis added]

³ As noted above, the applicant admitted that she herself had purposely refused to answer the question in regard to her prior arrest history because she feared refusal of the visa application. The record reflects that the applicant is continuing to attempt to conceal her prior misrepresentations and willful attempt to import drugs into the United States.

Section 101(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 —

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(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(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

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]

The applicant contends that she was unaware of the drugs that were concealed in the trunk of her vehicle. *Matter of Khalik*, 17 I&N Dec. 518 (BIA 1980), held that the Service cannot go behind the judicial record to determine the guilt or innocence of an alien for a criminal offense. A record of conviction constitutes a conviction for immigration purposes. The applicant can only appeal such a conviction within the court system. Moreover, the record reflects that the applicant admitted that she had made an agreement with an unidentified individual to bring the marijuana into the United States. The applicant admitted that the marijuana was placed in the trunk of her vehicle with her knowledge and she drove her vehicle into the United States. The applicant admitted that the marijuana was not hers, but that she was to be paid \$200 to deliver it.

The record reflects that the applicant was convicted of importation of marijuana and possession of marijuana with intent to distribute. The AAO therefore finds that the applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act, for involvement in the illicit trafficking of a controlled substance, marijuana.

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)(C), which are very specific and applicable. No waiver is available for an individual involved with the illicit trafficking of a 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.

Beyond the decision of the district director, the AAO finds that the applicant is inadmissible under the provisions of section 212(a)(2)(A)(i)(II) of the Act and no waiver is available to her. The Act makes it clear that a section 212(h) waiver is not available to an alien who has been convicted of more than a *single* crime related to a controlled substance which is more than *simple possession* of 30g of marijuana. Therefore, the applicant is mandatorily inadmissible to the United States and no purpose would be served in the favorable exercise of discretion in adjudicating an application to reapply for admission into the United States.⁴

ORDER: The appeal is dismissed.

⁴ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).