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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

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[Redacted]

FILE:

[Redacted]

Office: HOUSTON, TX

Date: SEP 23 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:

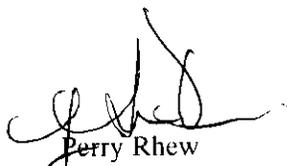
[Redacted]

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,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Houston, Texas, 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 July 3, 2002, pled guilty to delivery of marijuana for remuneration in violation of the Texas Penal Code. The applicant was granted deferred adjudication for a period of 9 months and was fined.

On June 30, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved Petition for Alien Relative (Form I-130) filed on his behalf by his lawful permanent resident father. On July 8, 2003, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On June 29, 2004, the Form I-485 was denied. On June 30, 2004, the Form I-601 was denied. On June 30, 2004, a Notice of Intent to Issue a Final Administrative Removal Order was issued, indicating that the applicant had entered the United States without inspection in 1998 and is deportable under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(A)(iii), for being convicted of an aggravated felony, specifically a trafficking crime punishable by at least one year in jail under section 101(a)(43)(B). On July 22, 2004, a Final Administrative Removal Order was issued finding the applicant deportable under section 237(a)(2)(A)(iii) of the Act. The applicant filed a petition for review with the Fifth Circuit Court of Appeals (Fifth Circuit). On December 7, 2004, the Fifth Circuit dismissed the applicant's petition for review. The applicant filed writ of habeas corpus and motion for stay of removal with the Southern District Court of Texas (District Court). On March 9, 2005, the District Court dismissed the applicant's writ. On March 17, 2005, the applicant was removed from the United States and returned to Mexico.

On April 30, 2007, the applicant filed the Form I-212 indicating that he resided in the United States. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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 remain in the United States with his lawful permanent resident father.

The field office director determined that the applicant was inadmissible pursuant to section 212(a)(2)(A)(i)(II), of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a controlled substance violation that is not simple possession of marijuana less than 30 grams. The field office director determined that the applicant was ineligible for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h). The field office director also found the applicant inadmissible under the provisions of section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), as a trafficker, and that no waiver is available. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision* dated September 13, 2007.

On appeal, counsel contends that the applicant's conviction has been overturned and dismissed pursuant to a writ of habeas corpus on April 7, 2005. Counsel contends that, since the applicant's conviction no longer has immigration consequences the applicant is not statutorily barred from the relief sought. Counsel contends that, given the applicant's family ties in the United States, his length of residence in the United States and positive equities, the Form I-212 should be positively adjudicated. *See Appeal Statement*, dated October 2, 2007. In support of his contentions, counsel

submits the referenced appeal statement, copies of conviction records and copies of case law. 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.

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 . . . .* (emphasis added.)

On appeal, counsel submits documentation establishing that the Texas Criminal Court granted a writ of habeas corpus in the applicant's conviction for delivery of marijuana on April 7, 2005. As such, the applicant, for immigration purposes, has no longer been convicted of delivery of marijuana. The AAO finds that the applicant is, therefore, no longer inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act for having been convicted of delivery of marijuana, a violation related to a controlled substance.

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

The AAO notes that a conviction is not required to find an applicant inadmissible under section 212(a)(2)(C) of the Act. *See Matter of Rico*, 16 I&N Dec. 181 (BIA 1977). The record reflects that the applicant was arrested for delivery of marijuana for remuneration. The AAO therefore finds that the applicant is still 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) of the Act, which are very specific and applicable. No waiver is available to individuals found inadmissible under section 212(a)(2)(C) of the Act. 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 field office director, the AAO finds that the applicant is inadmissible under the provisions of section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for illegally reentering the United States after having been removed, and does not qualify for a waiver or the exception under section 212(a)(9)(C)(ii) and (iii) of the Act. Therefore, the applicant is statutorily ineligible to apply for permission to reapply for admission into the United States.<sup>1</sup>

**ORDER:** The appeal is dismissed.

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<sup>1</sup> 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 (9<sup>th</sup> 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).