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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H4

[Redacted]

Date: **AUG 22 2011** Office: [Redacted] FILE: [Redacted]

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:

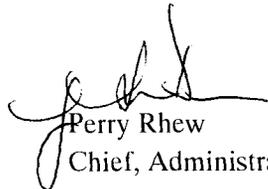
[Redacted]

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 \$630. 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 District Director, [REDACTED] 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 [REDACTED] who, on March 13, 1990, was admitted to the United States as a lawful permanent resident. On October 24, 1997, the applicant was convicted of one count of possession/purchase for sale of a controlled substance: cocaine, one count of possession/purchase for sale of a controlled substance: heroin and one count of transport/sell narcotics/controlled substance in violation of sections 11351 and 11352(A) of the [REDACTED] Health and Safety Code (CHSC). The applicant was sentenced to 36 months of probation and 157 days in jail.

On November 3, 2003, after the applicant sought admission as a lawful permanent resident at the [REDACTED] International Airport, he was placed into immigration proceedings pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(II) and 1182(a)(2)(C), for being convicted of a crime related to a controlled substance and for being involved in the illicit trafficking of a controlled substance. On December 2, 2003, the immigration judge ordered the applicant removed from the United States. On December 12, 2003, the applicant was removed from the United States and was returned to [REDACTED]

On February 1, 2005, the applicant filed the Form I-212 indicating that he resided in [REDACTED]. The applicant is indefinitely inadmissible under 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 aggravated felon. He 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 in the United States with his naturalized U.S. citizen spouse and six U.S. citizen children.

The district director determined that the applicant is inadmissible pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act and that there is no waiver available for these grounds of inadmissibility. The district director denied the Form I-212 accordingly. *See District Director's Decision*, dated March 16, 2005.

On appeal, counsel contends that the applicant is eligible for a section 212(c) waiver because the applicant resided in the United States for seven years as a lawful permanent resident.¹ *See Attachment to Form I-290B*. In support of his contentions, counsel submits only the referenced attachment. 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

¹ The AAO notes that a section 212(c) waiver is not applicable in the applicant's case since the applicant has already been removed from the United States and is no longer a permanent resident.

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 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-

....

(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 applicant is inadmissible under the provisions of section 212(a)(2)(A)(i)(II) of the Act and no waiver is available to him. 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. The Act also makes it clear that a 212(h) waiver is not available to a lawful permanent resident who is convicted of an aggravated felony after admission. The applicant is, therefore, ineligible for waiver consideration.

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 applicant is inadmissible pursuant to section 212(a)(2)(C) of the Act and no waiver is available to him. The AAO notes that a conviction is not required for a finding of inadmissibility under section 212(a)(2)(C) of the Act. A finding of inadmissibility under section 212(a)(2)(C) of the Act is dependent upon whether the evidence in the record reflects that there is sufficient evidence to

reasonably believe that the applicant has been or is involved in the illicit trafficking of a controlled substance.

The record reflects that the applicant was convicted of two counts of possession/purchase for sale of a controlled substance and one count of transport/sell narcotics/controlled substance. The evidence in the record reflects that there is sufficient evidence to reasonably 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. 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 or to an alien who has been convicted of an aggravated felony after having been admitted to the United States as a lawful permanent resident. Therefore the applicant is ineligible for waiver consideration. No waiver is available to 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 application will be denied as a matter of discretion.

ORDER: The appeal is dismissed. The application remains denied.