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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

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Date: APR 2 4 2012 Office: HOUSTON [redacted]

IN RE: Applicant: [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 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 record reflects that the applicant is a native and citizen of Mexico who was convicted in the 177th District Court of Harris County, Texas, for possession of cocaine less than one gram on September 28, 2007, and was removed from the United States on November 24, 2007. The applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II).[1] The applicant is further inadmissible pursuant to section 212(a)(9)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A) as an alien who has previously been removed. 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 US Citizen spouse.

The field office director determined that the applicant was inadmissible under section 212(a)(9) of the Immigration and Nationality Act (the Act), and denied the Form I-212 accordingly. *See Field Office Director's Decision, dated March 24, 2011.*

The AAO conducts appellate review on a de novo basis. See Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004).

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

(A) Convictions 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 a 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...

[1] The record also indicates that on January 23, 2010, the applicant attempted to reenter the United States by presenting a Mexican passport with a counterfeit ADIT stamp. Therefore, the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission to the United States through fraud or misrepresentation.

The applicant is therefore inadmissible under section 212(a)(2)(A)(i)(II) because he has violated a state law relating to a controlled substance.

Section 212(h) states, in pertinent part:

> (h) Waiver of Subsection (a)(2)(A)(i)(I), (II), (B), (D) and (E) – the Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of 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...

Section 212(h) indicates that a waiver of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act is only available to applicants who have violations related to a single offense of simple possession of 30 grams or less of marijuana. In the applicant's case, the violation pertains to cocaine possession, not marijuana possession. As such, the applicant is ineligible for a waiver of inadmissibility under section 212(a)(2)(A)(i)(II) 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 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)(A)(i)(II) of the Act. No waiver is available to an alien who has been convicted of possession of cocaine, 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 Field Office Director, Houston, Texas.

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