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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

PUBLIC COPY



H4

Date: **MAY 10 2012**

Office: HARLINGEN, TX

FILE: 

IN RE: 

APPLICATION: Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under section 212(a)(9)(A) of the Immigration and Nationality
Act, 8 U.S.C. § 1182(a)(9)(A)

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.

Thank you,


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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Harlingen, Texas, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the matter was appealed to the Administrative Appeals Office (AAO). The decision of the field office director was withdrawn and the matter was remanded to the field office director for entry of a new decision. The Form I-212 was denied by the field office director and certified to the AAO for review. The field office director's decision will be affirmed. The application is denied.

The applicant is a native and citizen of Mexico who, on December 1, 1990, was admitted to the United States as a lawful permanent resident. On December 13, 1996, the applicant pled guilty to and was convicted of possession of marijuana less than 2,000 pounds but greater than 50 pounds in violation of section 481.121(b)(5) of the Texas Health and Safety Code (TXHSC). The applicant was sentenced to ten years in jail. The imposition of the applicant's sentence was suspended in favor of ten years of probation and 80 days in jail. On May 23, 2003, the applicant was placed into proceedings pursuant to 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), 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), and for being convicted of a crime related to a controlled substance. On July 11, 2003, the immigration judge ordered the applicant removed under sections 237(a)(2)(A)(iii) and 237(a)(2)(B)(i) of the Act and terminated the applicant's lawful permanent resident status. On January 14, 2004, the applicant was removed from the United States and returned to Mexico.

On March 20, 2009, the applicant filed a Form I-212 indicating that he resided in the United States. On May 26, 2009, the applicant filed a second Form I-212, indicating that he continued to reside in the United States. On May 27, 2009, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On December 3, 2010, the Form I-485 and both Forms I-212 were denied. On October 31, 2010, the applicant filed a second Form I-485 based on an approved Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. citizen adult child. On February 17, 2011, the Form I-485 was denied. 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 aggravated felon. He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with his U.S. citizen adult child.

The field office director determined that the applicant is subject to reinstatement provisions under section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5). The field office director concluded that an alien subject to reinstatement is ineligible for any relief under the Act. The field office director denied the Form I-212 accordingly. *Field Office Director's Decision*, dated December 3, 2010.

On April 5, 2011, the AAO concluded that since the applicant's removal order had not been reinstated, the applicant was eligible to file for permission to reapply for admission. As such, the decision of the field office director was withdrawn and the matter was remanded to the Field Office Director to issue a new decision on the merits of the applicant's Form I-212. *Decision of the AAO*, dated April 5, 2011.

The field office director determined that the applicant was statutorily inadmissible indefinitely to the United States. The field office director further noted that no waiver was available to the applicant. The Form I-212 was denied accordingly and said decision was subsequently certified for review to the AAO. *Field Office Director's Notice of Certification*, dated December 2, 2011.

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]

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

(A)(i) [A]ny 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, or
- (II) a violation of...any law or regulation of a State, the United States, or a foreign country relating to a controlled substance... is inadmissible.

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 possession of more than 50 pounds of marijuana. As such, the applicant is ineligible for a waiver of inadmissibility under section 212(h) 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 more than 30 grams of marijuana, and 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. The decision of the field office director will therefore be affirmed.

ORDER: The decision of the field office director is affirmed. The application is denied.