

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **APR 14 2015**

Office: LOS ANGELES

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal pursuant to 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), and the matter is now on appeal with the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a native and citizen of Mexico who seeks permission to reapply for admission into the United States (Form I-212) under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii). The applicant was found to be inadmissible under 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), for having violated a law relating to a controlled substance and under section 212(a)(2)(C) of the Act, 8 U.S.C. § 1182(a)(2)(C), for having been a trafficker in a controlled substance. The applicant's application for a waiver of inadmissibility (Form I-601) is the subject of a separate appeal.

On May 22, 2014, the Field Office Director denied the application for permission to reapply for admission, concluding that the applicant was not eligible to file such application as the record did not indicate that he was an applicant for adjustment of status or an applicant for an immigrant visa, as a result of his application for adjustment of status being denied due to his inadmissibility as stated above.

On appeal, the applicant appears to argue that he does not require permission to reapply for admission after deportation or removal because of his previous application for family unity protection.

In support of the application, the record includes, but is not limited to: documentation of the applicant's criminal and immigration history.

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 has consented to the alien's reapplying for admission.

...

The applicant states that he was deported from the United States on December 20, 1968. The applicant states that he previously "applied for legalization under §301(a) of the Immigration Act of 1990" and appears to argue that, as a result, he does not require permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act.

We do not reach a conclusion regarding the applicant's inadmissibility under section 212(a)(9) of the Act, or eligibility for permission to reapply, due to the applicant's inadmissibility under section 212(a)(2)(A)(i)(II) of the Act (having been convicted of an offense involving possession of a controlled substance), and under section 212(a)(2)(C)(i) of the Act (having been a trafficker in a controlled substance) resulting from his 1968 conviction for "smuggling marihuana" in violation of 21 U.S.C. §176(a). The applicant is not eligible for a waiver of inadmissibility for these permanent grounds of inadmissibility; therefore, no purpose would be served in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964). As the applicant is inadmissible to the United States and no waiver is available, the Form I-212 was properly denied by the Field Office Director.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.