U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAY 1 5 2015 Office: SAN ANTONIO, TX FILE:

IN RE: Applicant:

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:

INSTRUCTIONS:

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Antonio, Texas, denied the application for permission to reapply for admission after removal and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who was admitted into the United States as a Lawful Permanent Resident (LPR) on August 11, 1989. On February 26, 1991, the applicant was deported from the United States pursuant to former section 241(a)(11) of the Immigration and Nationality Act (the Act), as an alien convicted of a narcotics offense. At the time of his deportation, this offense was also found to be an aggravated felony. The record reflects that the applicant reentered the United States in November 2011, using his lawful permanent resident card that he knew to be invalid. He sought to enter again on November 23, 2012, using his invalid permanent resident card. He was ordered removed pursuant to section 235(b)(1) of the Act on November 24, 2012. The applicant 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 travel to the United States and reside with his family.

In a decision dated September 16, 2014, the Field Officer 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 law involving a controlled substance. The Field Office Director also determined that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought admission to the United States through fraud or a material misrepresentation. The Field Office Director denied the applicant's Form I-212, Application for Permission to Reapply for Admission After Deportation or Removal accordingly, finding no purpose would be served in granting the Form I-212 permission to reenter because there is no waiver available for the applicant's controlled substance violation.

On appeal, the applicant asserts that the field office director erred in finding him inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act. The applicant further asserts that the field office director erred in finding that his criminal history renders him ineligible for admission to the United States indefinitely. *Statement in Support of Appeal Accompanying Form I-290B, Notice of Appeal or Motion*, dated October 17, 2014.

The evidence of record includes, but is not limited to: letters from an attorney and the applicant's daughter's school; relationship and identification documents; financial documents; statements from the applicant's qualifying spouse, the applicant, his daughters and friends; reports on the fatherless generation, the Mexican minimum wage, the mental health impacts of children of deported parents, and conditions in Mexico; the applicant's qualifying spouse's 2008 and 2009 work status reports; and photographs.

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:

> 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 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.

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

(B) Controlled Substance Traffickers.- Any alien who the consular officer or the Attorney General [the Secretary of Homeland Security] 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)). . . . is inadmissible.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(a)(9) of the Act states, in pertinent part:

(A) Certain alien 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 5 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 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

According to evidence in the record, the applicant was ordered deported on February 26, 1991 and was deported on the same day. The applicant entered the United States in November 2011, using his lawful permanent resident card, while knowing it was invalid. In November 2012, he unsuccessfully sought to enter the United States using his invalid lawful permanent resident card. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C) of the Act for having procured and sought to procure admission by misrepresenting his immigrant status.

The record establishes that on or about December 21, 2012, the applicant was deported from the United States for a second time and was deemed to be inadmissible under section 212(a)(9)(A)(ii)(I) of the Act.

On 1990, in the Superior Court of the State of California, the applicant was convicted for the offense of *possession for sale of a controlled substance,* cocaine, a felony in violation of section 11351 of the Health and Safety Code. On 1990, the applicant was sentenced to two years of imprisonment.[1]

The record establishes the applicant was convicted of the aforementioned crime. The applicant provides no evidence showing that his conviction was vacated for reasons that would result in it not being considered a conviction under the Act. Therefore, he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violating a law related to a controlled substance and section 212(a)(2)(C)(i) of the Act for having been an illicit trafficker of a controlled substance. As a result of this conviction, the applicant is also inadmissible under section 212(a)(9)(A)(ii)(II) of the Act for having been convicted of an aggravated felony as defined in section 101(43)(B) of the Act.

Section 212(h) of the Act provides, in pertinent part, that:

[1] On 2012, in the United States District Court, for the the applicant was also convicted of attempting to enter the United States illegally, in violation of 8 U.S.C. § 1325(a)(3).

> The [Secretary] 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 . . . .

The applicant was not convicted of a single offense of simple possession of 30 grams or less of marijuana. Therefore, his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act cannot be waived under section 212(h) of the Act. Furthermore, the applicant's criminal record constitutes reasonable, substantial, and probative evidence that the applicant has been an illicit trafficker in a controlled substance or has been a "knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled substance." Inadmissibility under section 212(a)(2)(C) of the Act applies when the adjudicator "knows or has reason to believe" that the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled, or endeavored to do so. *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977); *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9th Cir. 2000). In order for the adjudicator to have sufficient "reason to believe" that an applicant has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by "reasonable, substantial, and probative evidence." *Matter of Rico*, 16 I&N Dec. at 185. According to a criminal complaint in evidence, the applicant willfully and unlawfully possessed cocaine for sale on or about January 4, 1990. The record contains an abstract of judgment indicating that on February 27, 1990, the applicant was convicted on one count of violating section 11351 of the California Health and Safety Code, possession of cocaine for sale and was sentenced to 2 years of jail. The applicant is subject to the provisions of section 212(a)(2)(C) of the Act. No waiver is available to an alien who has been convicted of a drug trafficking offense, 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.

Based on his 1990 conviction, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act for having been convicted of a law involving a controlled substance and for being an illicit trafficker in a controlled substance. *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. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the field office director.

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