



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF P-M-

DATE: JAN. 5, 2016

APPEAL OF CHULA VISTA FIELD OFFICE DECISION

APPLICATION: FORM I-212, APPLICATION FOR PERMISSION TO REAPPLY FOR
ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR
REMOVAL

The Applicant, a native and citizen of Mexico, seeks permission to reapply for admission into the United States. See Immigration and Nationality Act (the Act) § 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). The Field Office Director, Chula Vista, California, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record establishes that on [REDACTED] 2006, the Applicant was ordered removed by an immigration judge pursuant to section 212(a)(2)(A)(i)(II) of the Act for admitting to committing acts which constitute the essential elements of a violation relating to a controlled substance. The Applicant was removed to Mexico on September 29, 2006.

On April 17, 2015, the Director determined that the Applicant was inadmissible to the United States for having admitted to the essential elements of a controlled substance offense. The Director found the Applicant ineligible for a waiver under section 212(h) of the Act, as waivers are only available for a single offense of simple possession of 30 grams or less of marijuana. Accordingly, the Director denied the Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

On June 23, 2015, the Applicant filed the instant appeal, asserting that there is no record of his conviction for any charge for possession of methamphetamine or any other controlled substance. In support, he submits criminal case record search results from the Superior Court of California indicating that no records were found under his name and date of birth. The entire record was reviewed and considered in rendering this decision.

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

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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 (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

In order for the admission of a crime or acts constituting the essential elements of a crime to be properly used as a basis for inadmissibility, three conditions must be met: 1) the admitted acts must constitute the essential elements of a crime in the jurisdiction in which they occurred; 2) the respondent must have been provided with the definition and essential elements of the crime, in understandable terms, prior to making the admission; and 3) the admission must have been voluntary. *Matter of K-*, 7 I&N Dec. 594, 597 (BIA 1957); *see also Matter of G-M-*, 7 I&N Dec. 40, 70 (BIA 1955).

The record reflects that the Applicant's statements during his August 30, 2006, removal hearing may be properly used as a basis for inadmissibility pursuant to section 212(a)(2)(A) of the Act. In his written decision, the Immigration Judge noted that he explained the elements of possession or use of methamphetamine to the Applicant, and that the Applicant stated that he understood the definition of the offense: knowingly possessing methamphetamine without any permission from a healthcare professional. *Decision and Order of the Immigration Judge Ordering Removal*, [REDACTED] 2006 at 2. The Immigration Judge's explanation adequately defined the essential elements of possession of a controlled substance under California Health and Safety Code § 1137(a)(2). Following this explanation, the Applicant affirmed his understanding and admitted to committing this offense by stating that he used methamphetamine in California on several occasions; that he knew the substance was methamphetamine; that he had no permission from a healthcare provider to use methamphetamine; that he knew its possession was unlawful; and that he agreed that his conduct violated the California Health and Safety Code. *Decision and Order of the Immigration Judge* at 2. Nothing in the record indicates that the Applicant made these statements involuntarily. The Applicant's brief in support of the instant

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appeal does not dispute his prior statements or the conditions under which they were made. In totality, the Applicant's prior statements to the Immigration Judge meet the conditions of an admission of acts constituting the essential elements of a violation relating to a controlled substance. Accordingly, the Applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

Section 212(h) of the Act provides for a discretionary waiver for an applicant for admission who has a single offense for simple possession of 30 grams or less of marijuana and who meets the other statutory eligibility requirements. However, the Applicant was found inadmissible for having admitted to the essential elements of a controlled substance offense relating to methamphetamine. Accordingly, he is ineligible for a waiver 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 a foreign national 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 inadmissible under section 212(a)(2)(A)(i)(II) of the Act and is permanently ineligible for a waiver as discussed above, the Applicant is ineligible to obtain permission to reapply for admission into the United States.

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, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of P-M-*, ID# 15082 (AAO Jan. 5, 2016)