



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

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

MATTER OF J-E-B-V-

DATE: JUNE 15, 2016

APPEAL OF JACKSONVILLE, FLORIDA 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 the Dominican Republic, was found inadmissible for having been previously ordered removed and convicted of an aggravated felony and seeks permission to reapply for admission to the United States. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii). U.S. Citizenship and Immigration Services (USCIS) may remove the inadmissibility bar by granting permission to reapply in the exercise of discretion.

The Field Office Director, Jacksonville, Florida, denied the application. The Director concluded that as a result of the Applicant's removal order and the nature of the Applicant's conviction of an aggravated felony, the Applicant was permanently barred from readmission into the United States.

The matter is now before us on appeal. In the appeal, the Applicant contends that she is eligible to obtain permission to reapply based on hardship to her parents, siblings, and children.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States and has been found inadmissible for having been previously order removed and convicted of an aggravated felony, specifically possession with intent to distribute seven hundred grams but less than one kilogram of heroin in violation of 21 U.S.C. § 846. Section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), provides, in pertinent part:

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 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 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.

Individuals found inadmissible under section 212(a)(9)(A) of the Act may seek permission to reapply for admission under section 212(a)(9)(A)(iii). Section 212(a)(9)(A)(iii) of the Act provides, in pertinent part:

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 continuous territory, the [Secretary of Homeland Security] has consented to the alien's reapplying for admission.

Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *See Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services in the United States. *See Matter of Tin*, 14 I&N Dec. 371 (Reg'l Comm'r 1973); *see also Matter of Lee, supra*, at 278 (Finding that a record of immigration violations, standing alone, does not conclusively show lack of good moral character and "the recency of the deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience"). Generally, favorable factors that come into existence after an alien is placed in removal proceedings, so-called "after-acquired equities," are accorded less weight in a discretionary determination. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301-302

(b)(6)

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(BIA 1996); *see also Ghassan v. INS*, 972 F.2d 631 (5th Cir. 1992); *Garcia-Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991); *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980).

II. ANALYSIS

The only issue on appeal is whether the Applicant is eligible for permission to reapply for admission into the United States. Because the Applicant was convicted of possession with intent to distribute heroin, a controlled substance, we conclude that the Applicant is permanently inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), and is ineligible for a waiver of this ground of inadmissibility. Consequently, we will dismiss the appeal of the denial of her request for permission to reapply for admission as a matter of discretion, as she would remain inadmissible even if she were granted permission to reapply.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(9)(A) of the Act for having been previously ordered removed and convicted of an aggravated felony. Specifically, the record establishes that the Applicant was admitted to the United States on June 17, 1988, as a lawful permanent resident. On [REDACTED] 2001, the Applicant was convicted in the U.S. District Court for the [REDACTED] of possession with intent to distribute seven hundred grams but less than one kilogram of heroin in violation of 21 U.S.C. § 846. As a result of the conviction, the Applicant was ordered removed on [REDACTED] 2005, as an aggravated felon, and she departed pursuant to that removal order on or around [REDACTED] 2005.

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

(i) In General

[A]ny 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.

Individuals found inadmissible under section 212(a)(2)(A)(i)(II) of the Act may seek a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), but this waiver is only available if the conviction relates to a single offense of simple possession of 30 grams or less of marijuana. Here, the record establishes that the Applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for a controlled substance violation, and since she was convicted of possession of heroin, she is not eligible for a waiver under section 212(h) of the Act.

The record further establishes that the Applicant was convicted of an aggravated felony under section 101(a)(43)(B) of the Act, an offense relating to the illicit trafficking in a controlled substance, as described in section 102 of the Controlled Substances Act, including a drug trafficking crime, as defined in section 924(c) of Title 18, United States Code. Section 212(h)(2) of the Act provides that no waiver shall be granted to a foreign national who has previously been admitted to the United States as lawfully admitted for permanent residence if, since the date of such admission, the foreign national has been convicted of an aggravated felony. The Applicant was convicted of an aggravated felony after her 1988 admission to the United States as a lawful permanent resident, and even if she were otherwise eligible to seek a waiver under section 212(h) of the Act, she is permanently barred from obtaining such a waiver pursuant to section 212(h)(2) of the Act.

B. Permission to Reapply

An application for permission to reapply for admission is denied, in the exercise of discretion, to an individual who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r 1964). The Applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for her conviction for possession with intent to distribute heroin, and she is not eligible for a waiver of inadmissibility. As the Applicant is permanently inadmissible to the United States and ineligible for a waiver of inadmissibility, we will deny her request for permission to reapply as a matter of discretion as no purpose would be served in granting the application.

III. CONCLUSION

The Applicant has the burden of proof in seeking permission to reapply for admission. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of J-E-B-V-*, ID# 16496 (AAO June 15, 2016)