

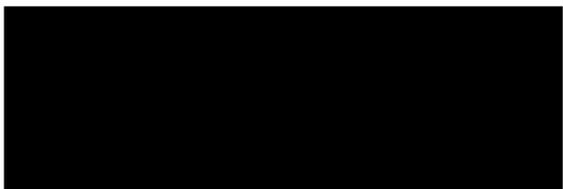
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U.S. Citizenship
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FILE: [REDACTED]
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Office: NEBRASKA SERVICE CENTER

Date: **OCT 29 2007**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Inadmissibility pursuant to either Section 210 or Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility within the legalization program (Form I-690) was denied by the Director, Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant was not eligible for membership in the legalization class-action lawsuit *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz.). The decision in that case applies to aliens whose application for temporary residence under section 245A of the Immigration and Nationality Act (Act) was denied or whose temporary resident status under section 245A of the Act was terminated as a result of that alien having been outside of the United States after January 1, 1982 under an order of deportation. The director denied the Form I-690 waiver application because the applicant failed to establish that he was admissible under both section 210 of the Act and section 245A of the Act and the applicant had applied for and been denied temporary residence under section 210 of the Act rather than section 245A of the Act.

On appeal, the applicant provides a detailed statement relating to his criminal history. The applicant submits documentation in support of his appeal.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man days during the twelve month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 210.3(a).

An alien applying for adjustment of status to temporary resident under section 245A of the Act has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy 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). Section 212(a)(2)(A)(i)(II) of the Act (formerly section 212(a)(23) of the Act).

A waiver of grounds of inadmissibility is not available to an alien found to be inadmissible under specifically enumerated grounds of section 212(a) of the Act including section 212(a)(2)(A)(i)(II) of the Act. Section 210(c)(2)(B)(ii) of the Act, Section 245A(d)(2)(B)(ii) of the Act, 8 C.F.R. § 210.3(d)(3)(iii), and 8 C.F.R. § 245a.2(k)(3)(ii).

The sole exception allowing for the waiver of the ground of inadmissibility for an alien found inadmissible under Section 212(a)(2)(A)(i)(II) of the Act as a result of a conviction involving a controlled substance is that available to an alien convicted of "...a single offense of simple

possession of 30 grams or less of marijuana....” Section 210(c)(2)(B)(ii)((III) of the Act, Section 245A(d)(2)(b)(ii)(II) of the Act, 8 C.F.R. § 210.3(d)(3)(iii), and 8 C.F.R. § 245a.2(k)(3)(ii).

Section 212(a)(9)(A) of the Act (formerly section 212(a)(17) of the Act) states the following in regard to aliens previously removed from the United States:

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) [of the Act] or at the end of proceedings under section 240 [of the Act] 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 [of the Act] 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 Attorney General has consented to the alien's reapplying for admission.

The record contains court documents demonstrating that the applicant was convicted of a violation of section 11357(a), Possession of Concentrated Cannabis, of the California Health and Safety Code in Municipal Court, North County Judicial District, County of San Diego, State of California on November 8, 1979. Clearly, the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act as a result of his conviction for a crime involving a controlled substance. While such ground of inadmissibility may be waived if such conviction was for a single offense of simple possession of 30 grams or less of marijuana pursuant to section 210(c)(2)(B)(ii)((III) of the Act, section 245A(d)(2)(b)(ii)(II) of the Act, 8 C.F.R. § 210.3(d)(3)(iii), and 8 C.F.R. § 245a.2(k)(3)(ii), the record reflects that the applicant has failed to provide evidence relating to the amount and weight of concentrated cannabis he possessed at the time of his arrest. Therefore, the applicant has failed to establish that he is eligible for a waiver to overcome this particular ground of inadmissibility.

The record contains a validly executed warrant of deportation that reflects that the applicant was deported from the United States to Mexico on December 19, 1979. The applicant acknowledges

that he subsequently reentered this country without the consent of the Attorney General to reapply for admission. Consequently the applicant is inadmissible to the United States as an alien who returned to this country after having been deported under section 212(a)(9)(A)(ii)(II) of the Act. This particular ground of inadmissibility may be waived pursuant to section 210(c)(2)(B) of the Act and section 245A(d)(2) of the Act. Nevertheless, no purpose would be served in waiving the applicant's inadmissibility under section 212(a)(9)(A)(ii)(II) of the Act as the applicant remains inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act as a result of his conviction for a crime involving a controlled substance.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she is admissible to the United States under the provisions of section 210(c) of the Act and section 245A of the Act. 8 C.F.R. § 210.3(b)(1) and 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.