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U.S. Department of Justice

Immigration and Naturalization Service

identifications deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: EAC01 199 54281 Office: Vermont Service Center Date: 11 APR 2002

[redacted]

IN RE: Applicant: [redacted]

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)

IN BEHALF OF APPLICANT:

[redacted]

Public copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic who was lawfully admitted for permanent residence on March 28, 1996, without having revealed his prior convictions. On March 9, 1998, he applied for admission into the United States as a returning resident alien. A Notice to Appear was served on the applicant charging him with being inadmissible under sections 212(a)(2)(A)(i)(II), 212(a)(2)(C) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II), 1182(a)(2)(C), and 1182(a)(6)(C)(i), for having been convicted of a violation of a law relating to a controlled substance, for being an illicit trafficker of a controlled substance, and for having procured a visa by fraud. On March 20, 1998, the applicant was ordered removed from the United States by an immigration judge, and he was removed on March 30, 1998. Therefore, he is also inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. 1182(a)(9)(A)(ii), for having been removed from the United States. The applicant married a U.S. citizen on January 22, 1994, and seeks permission to reapply for admission under section 212(a)(9)(A)(iii), 8 U.S.C. 1182(a)(9)(A)(iii), to rejoin his family.

Citing Matter of J-F-D-, 10 I&N Dec. 694 (Reg. Comm. 1963), and Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964), the director determined that the applicant is statutorily inadmissible to the United States and no waiver is available. The director then denied the application accordingly.

On appeal, counsel states that the director's cited section 212(a)(9)(i) of the Act, correctly cited as 212(a)(9)(A)(i) of the Act, did not consider the exception under (iii) of that section. Thus the Service has the power to adjudicate the above application. Counsel states that more than 15 years have passed since the date of the offense.

Section 212(a)(9)(A) of the Act, provides, in pertinent part, that:

> (ii) Any alien not described in clause (i) who-
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> > (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) 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 Attorney General has consented to the alien's reapplying for admission.

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

> (i) 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.
>
> (C) Any alien who the consular or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

Section 212(h) of the Act provides that the Attorney General may, in his discretion, waive application of subparagraphs (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 if-....

The record reflects the following:

> (1) On August 12, 1985, the applicant was convicted of the offense of Criminal Possession of a Controlled Substance, cocaine, and he was given a conditional discharge.
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> (2) On December 19, 1985, the applicant was convicted of the offense of Criminal Sale of Controlled Substance, cocaine, and he was placed on five years probation.

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 convicted of violating a law relating to illicit trafficking, since he is mandatorily inadmissible to the United States under present sections 212(a)(2)(A)(i)(II) or 212(a)(2)(C) of the Act, and no purpose would be served in granting the application.

The record reflects that, in addition to being inadmissible for fraud under section 212(a)(6)(C)(i) of the Act, the applicant is inadmissible to the United States under sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act for violating laws relating to controlled substances. No waiver of such grounds of inadmissibility is available, except for a single offense of simple possession of 30 grams or less of marijuana. Therefore, the favorable exercise of discretion in this matter is not warranted.

In discretionary matters, the applicant bears the full burden of proof. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957); Matter of Ducret, 15 I&N Dec. 620 (BIA 1976). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.