H4

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE [redacted] Office: SAN ANTONION, TX Date: AUG 18 2003

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)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B).

ON BEHALF OF APPLICANT: [redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (I-212 application) was denied by the District Director, San Antonio, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 34-year old native and citizen of Mexico. The applicant was found to be inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(II) and 1182(a)(2)(C)(i), for having three criminal convictions involving controlled substances. The applicant seeks permission to reapply for admission into the United States under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to live with her U.S. citizen children.[1]

The director discussed the unfavorable factors in the applicant's case. The director then determined that because the applicant was statutorily ineligible for a waiver of inadmissibility, no purpose would be served in approving the applicant's I-212 application. The I-212 application was denied accordingly.

On appeal, counsel argues that since the applicant was not convicted of crimes of violence, her crimes should not be considered aggravated felonies. Counsel also states that the applicant resided in the United States as a lawful permanent resident for thirteen years before her first conviction.

Counsel also indicates that he would submit a brief and, or additional evidence within thirty days of the appeal. More than ninety days have lapsed since the appeal, and counsel failed to supplement the record.

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

> (2) 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 conspiracy or attempt to violate)

[1] She indicated that her U.S. citizen husband was in prison.

> 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 [2](A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

Here, the applicant was twice convicted of possession of cocaine. She is thus statutorily ineligible for a waiver to her ground of inadmissibility.

In *Matter of Tin,* 14 I&N Dec. 373 (BIA 1973), the Board of Immigration Appeals (BIA) held that:

> In determining whether the consent required by statute [for an application for permission to reapply for admission] should be granted [by the Attorney General], all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Tin at 373-374.

In *Matter of Martinez-Torres,* 10 I&N Dec. 776 (BIA 1964), the BIA held that in the case of an applicant who is mandatorily inadmissible to the U.S. no purpose would be served in adjudicating or granting the application for permission to reapply for admission into the United States. As a result, the district director's denial of an alien's I-212 application, as a matter of administrative discretion, was proper.

A review of the evidence in the record reflects that the applicant is statutorily inadmissible to the U.S. pursuant to section 212(a)(2)(A)(i)(II) of the Act. Thus, the

district director's discretionary denial of his application was proper.

ORDER: The appeal will be dismissed.