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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

FILE: [redacted] Office: IRVING, TEXAS Date: AUG 20 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)(2)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(C).

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 was denied by the District Director, Irving, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 43-year old native and citizen of Mexico. On October 27, 1989, the applicant was convicted in Hidalgo County, Texas of the crime of illegal investment. On November 20, 1990, the applicant was deported from the United States. On November 19, 1990, the applicant was ordered removed from the United States by an Immigration Judge, pursuant to section 241(a)(11) of the Immigration and Nationality Act, for having been convicted of a crime relating to a controlled substance. The applicant seeks permission to reapply for admission into the United States after deportation or removal (I-212 application) in order to reside with his wife and United States citizen child.

The district director found that based on the evidence in the record, the applicant is inadmissible to the U.S. pursuant to section 212(a)(6)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(B), as an alien deported from the United States and seeking admission within five years of deportation without prior consent of the Attorney General of the United States. The district director further found that the applicant is inadmissible to the U.S. pursuant to section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(2)(C), for his conviction of a crime involving the importation or possession of controlled substances. The district director concluded that there is no waiver for the latter ground of inadmissibility, therefore no useful purpose would be served in granting permission to reapply to admission into the United States. The application was denied accordingly.

On appeal, counsel for the petitioner indicated that he would submit a brief and or additional evidence within thirty days of the appeal. More than nine years have lapsed and nothing more has been submitted into the record.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9) states in pertinent part:

> (9) Aliens Previously Removed.-
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> (A) Certain aliens previously removed.-
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> (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.

(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

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

Any alien who the consular officer or the Attorney General knows or has reason to believe --

(i) Is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so . . . is inadmissible.

Here, the applicant was convicted of illegal investment for intentionally and knowingly financing and investing funds to further the commission of an offense in violation of the Texas Controlled Substances Act, Article 4476-15, to-wit: Possession of Marihuana in an amount of more than fifty pounds. Therefore, the applicant is inadmissible pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C)(i) of the Act. There is no

waiver of inadmissibility available for the latter ground of inadmissibility.

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 convicted of illegal investment for intentionally and knowingly financing and investing funds to further the commission of an offense involving more than fifty pounds of marijuana, well above the thirty grams or less discussed in section 212(h) of the Act. The applicant is thus statutorily ineligible for a wavier to this ground of inadmissibility.

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.

A review of the evidence in the record reflects that the applicant is statutorily inadmissible to the U.S. pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act. Thus, the district director's discretionary denial of his application was proper.

ORDER: The appeal is dismissed.