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U.S. Department of Homeland Security  
20 Mass. Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

#2

**PUBLIC COPY**

[REDACTED]

FILE:

Office: LOS ANGELES, CA

Date: NOV 01 2006

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, CA, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation on February 7, 2003. The applicant is the son of a lawful permanent resident and is married to a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that his lawful permanent resident mother would suffer extreme hardship as a result of the applicant's removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated February 2, 2005.

On appeal, counsel submits evidence showing that the applicant is now married to a U.S. citizen. Counsel asserts that the applicant's spouse, mother and child will suffer extreme hardship as a result of his removal from the United States. *Counsel's Appeals Brief*, dated March 4, 2005.

The record indicates that on February 7, 2003, at the age of 18, the applicant made a false claim to U.S. citizenship at the San Ysidro port of entry. While crossing the U.S.-Mexico border the applicant verbally declared to an immigration officer that he was a U.S. citizen. *Form I-860*, dated February 8, 2003.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

- (ii) Falsely claiming citizenship. –

- (I) In General –

- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

The AAO notes that the record includes a letter, dated March 28, 2003, from [REDACTED] the Interim Director of Field Operations in San Diego, CA. In this letter the Interim Director of Field Operations approved a request from the applicant for prosecutorial discretion and “reduced the charges” against the applicant from a false claim to U.S. citizenship under section 212(a)(6)(C)(ii) of the Act to misrepresentation under section 212(a)(6)(C)(i) of the Act.

The AAO finds that the Interim Director of Field Operations had no authority to “reduce the charges” in the applicant’s case.

It is important to recognize not only what prosecutorial discretion is, but also what it is not. The doctrine of prosecutorial discretion applies to law enforcement decisions whether, and to what extent, to exercise the coercive power of the Government over liberty or property as authorized by law in cases when individuals have violated the law. Prosecutorial discretion does not apply to affirmative acts of approval, or grants of benefits, under statute or other applicable law that provides requirements for determining when the approval should be given. For example, the INS has prosecutorial discretion not to place a removable alien in proceedings, but it does not have prosecutorial discretion to approve a naturalization application by an alien who is ineligible for that benefit under the INA.

*Memorandum by Doris Meissner, Commissioner, Immigration and Naturalization Service*, dated November 17, 2000 at 3. Inadmissibility is determined by statute. The applicant is applying for a benefit, adjustment of status, and must be admissible under the statute to receive this benefit. Therefore, the Interim Director of Field Operations had no authority to “reduce the charges” against the applicant and the applicant’s inadmissibility will be reviewed under section 212(a)(6)(C)(ii) of the Act, for applicants making false claims to U.S. citizenship.

The AAO finds that applicants making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. The District Director erred in allowing the applicant to apply for a waiver of this ground of inadmissibility.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.