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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: ACCRA, GHANA

Date:

NOV 07 2006

IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer-in-Charge, Accra, Ghana and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(B), for failure to attend removal proceedings, section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a benefit under the Act by fraud or willful misrepresentation, section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming U.S. citizenship, section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been an alien who was removed from the United States and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. The applicant is the daughter of 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) and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The acting officer-in-charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Acting Officer-in-Charge*, dated April 1, 2006. The acting officer-in-charge also denied the applicant's Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) as a matter of discretion. *Id.*

On appeal, the applicant asserts that the decision was premised on an unfounded charge, her two young U.S. citizen children will be constructively deported and her U.S. mother will face hardship. *Form I-290B*, dated April, 2006.¹ The applicant has also requested oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, the necessity for oral argument has not been shown. Consequently, the request is denied.

In support of the appeal, the applicant submits a brief, a Department of State memo on false claims to U.S. citizenship, a statement, a statement from her mother and medical records. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant attempted to enter the United States on or about January 20, 1997 with a U.S. passport. The applicant was placed in exclusion proceedings and was granted asylum and withholding of deportation on January 5, 1998. The applicant subsequently abandoned her asylum and withholding of deportation applications through failure to attend a removal hearing regarding the fraudulent nature of her asylum claim. The applicant was ordered excluded and deported from the United States *in absentia* on May 12, 1998. The applicant departed the United States on April 4, 2005.

The acting officer-in-charge found the applicant inadmissible under section 212(a)(6)(B) of the Act which states:

¹ The Form I-290B and supporting brief were prepared by the father of the applicant's children, Dr [REDACTED]

(B) Failure to Attend Removal Proceeding.-

- (i) Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

However, section 212(a)(6)(B) of the Act does not apply to aliens who failed to attend an exclusion hearing. INS Memo on Unlawful Presence, Subject: Additional Guidance for Implementing Sections 212(a)(6)(B) and 212(a)(9)(B) of the Immigration and Nationality Act (the Act), dated June 17, 1997. Therefore, the applicant's contentions regarding this finding of inadmissibility will not be addressed as the issue of section 212(a)(6)(B) inadmissibility is moot.

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

- (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 (including section 274A) or any other Federal or State law is inadmissible.
 - (II) Exception- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

The applicant cites section 240(a)(3) of the Act in asserting that exclusion proceedings shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States. *Applicant's Brief*, at 2, dated April 20, 2006. The applicant states that the acting officer-in-charge's finding of inadmissibility under section 212(a)(6)(C)(ii) of the Act was not determined by the sole and exclusive procedure provided in section 240(a)(3) of the Act and therefore cannot be upheld. *Id.* at 3. The AAO notes that this provision of the law is referring to findings of inadmissibility in removal proceedings and it indicates that other sections of the Act permit findings of inadmissibility. *See Section 240(a)(3) of the Act.*

The applicant asserts that the acting officer-in-charge erred in finding her inadmissible under section 212(a)(6)(C)(ii) of the Act. *Id.* at 1. The record reflects that on January 20, 1997, the applicant presented a U.S. passport in order to gain entry into the United States. *Record of Sworn Statement, Adenike Ijiwoye*, dated January 20, 1997.² As the applicant falsely represented herself as a U.S. citizen in order to gain admission into the United States, she is inadmissible under section 212(a)(6)(C)(ii) of the Act. In addition, the exception to this ground of inadmissibility does not apply to the applicant.

The AAO notes that false claims to U.S. citizenship made on or after September 30, 1996 are examined under section 212(a)(6)(C)(ii) of the Act, not section 212(a)(6)(C)(i) of the Act. *Department of State Memo on False Citizenship Claims*, at 1, dated September 17, 1997. The applicant cites this memo in asserting that a false claim to U.S. citizenship, in order to secure employment, would justify a section 212(a)(6)(C)(ii) finding and there is nothing in the language which would require that the false claim be made to a U.S. official involved in implementing some aspect of the Act. *Applicant's Brief*, at 3. The AAO notes that the memo states that section 212(a)(6)(C)(ii) of the Act applies to false claims made to obtain entry into the United States. *Department of State Memo on False Citizenship Claims*, at 2.

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

(A) Certain alien previously removed.-

(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 dated of such removal. . . 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

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

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

² The acting officer-in-charge refers to the applicant's statement that she presented the U.S. passport to a customs agent and proceeded to speculate on her activity before encountering the customs agent. *Decision of the Acting Officer-in-Charge*, at 2-3. However, the record reflects that she presented a U.S. passport to an immigration officer. *Memorandum Regarding Consideration of Parole*, dated February 14, 1997.

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act as she accrued unlawful presence from May 12, 1998, the date she was ordered excluded and deported, until her departure from the United States on April 4, 2005. However, no purpose would be served in determining whether a waiver under section 212(a)(9)(B)(v) is applicable due to the applicant's permanent inadmissibility under section 212(a)(6)(C)(ii) of the Act. The applicant's Form I-601 is dismissed.

The applicant is also inadmissible under section 212(a)(9)(A)(i) of the Act as she is seeking admission within five years of her removal. However, her application for permission to reapply for admission is denied as the Form I-601 has been denied.

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 who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act. No waiver is available to an alien who has made a false claim to U.S. citizenship, therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the Acting Officer-in-Charge.

ORDER: The appeal is dismissed.