



U.S. Citizenship
and Immigration
Services

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APR 17 2007

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[Redacted]

FILE:

Office: SAN DIEGO, CA

Date:

IN RE:

[Redacted]

PETITION: 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 PETITIONER:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: DISCUSSION: The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, San Diego, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having falsely represented herself as a U.S. citizen. Consequently, on October 28, 2000, she was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). Immediately after her removal she reentered the United States without inspection. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside the United States with her U.S. citizen spouse.

The district director concluded that the applicant was permanently inadmissible and denied the waiver application accordingly. *Decision of the District Director*, dated June 22, 2005.

On appeal, counsel states that the Director made an error of law in determining that the applicant made a false claim to U.S. citizenship by stating to an immigration officer that she had been born in Carson City, Nevada. He asserts that under the clear case law of the U.S. Court of Appeals for the Ninth Circuit, a claim to have been born in the United States is not the equivalent of a false claim to U.S. citizenship. For this reason, he concludes that the Director's denial should be reversed and the application should be remanded to the District Office for adjudication on the equities. *Form I-290B*, dated July 20, 2005.

The record indicates that on October 27, 2000 at the San Ysidro Port of Entry, the applicant declared herself to be a U.S. citizen by stating to the Immigration Officer that she was born in Nevada.

Counsel's argument concerning a false claim to U.S. birth, not being a false claim to U.S. citizenship is unpersuasive. Counsel cites numerous cases as the authority for this interpretation of Section 212(a)(6)(C)(ii) of the Act. However, all the cases cited involve a penal statute, not an immigration violation. In addition, none of the cases involved a person claiming to be born in one of the 50 states at a U.S. Port of Entry. The applicant in this case explicitly stated that she was born in Nevada, which would by birth make her a U.S. citizen. The Record of Deportable/Inadmissible Alien (Form I-213), which was issued on October 28, 2000, clearly states that the applicant made an oral statement that she was born in Nevada. In addition, the record of proceedings contains a Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867B) in which the applicant admitted under oath that she stated that she was born in Nevada. Therefore, the AAO finds that the applicant made a false claim to U.S. citizenship when she stated to an Immigration Officer at a Port of Entry that she was born in Nevada.

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

(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.

(iii) Waiver Authorized

For provisions authorizing waiver of clause (i), see subsection (i) of this section.

The applicant in the instant case does not qualify for the exception under section 212(a)(6)(C)(ii)(II) of the Act and no waiver of inadmissibility is available.

The AAO notes that the applicant is also inadmissible under section 212(a)(9)(a) of the Act and has submitted the Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

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. As the applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act, for which no waiver is available, 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 appeal will be dismissed.

ORDER: The appeal is dismissed.