

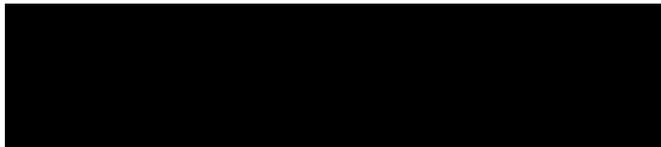
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U.S. Department of Homeland Security
20 Massachusetts Avenue, NW, Rm. 3000
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U.S. Citizenship
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Services

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FILE:

Office: Chicago, IL

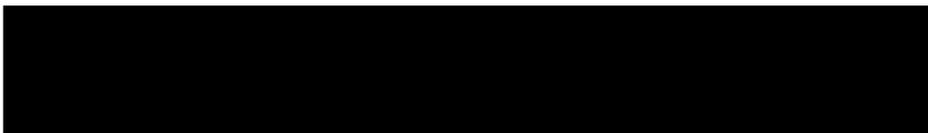
Date: **JAN 11 2007**

IN RE:



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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of the Philippines 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)(ii), for falsely claiming United States citizenship so as to procure admission to the United States. The applicant is the spouse of a naturalized citizen and the daughter of a lawful permanent resident of the United States. She seeks eligibility for adjustment of status under the provisions of section 245(i)(1) of the Act, 8 U.S.C. § 1255(i)(1), or a waiver of inadmissibility in order to remain in the United States with her husband and mother.

The district director stated that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 does not allow for a waiver of inadmissibility under section 212(a)(6)(C)(ii) for aliens who attempt entry into the United States by falsely claiming to be a U.S. citizen on or after September 30, 1996. The director found that the applicant made such a claim before an immigration inspector in October 1997 in order to gain admission into the United States. Thus, he denied the application to adjust status. *Decision of the District Director*, dated May 5, 2005.

On appeal, counsel states that the applicant concedes that she entered the United States on a B-2 visa in December 2000 under the name [REDACTED]. However, counsel states that the applicant denies that she declared to an immigration inspector that she was a U.S. citizen when she entered the United States in October 1997 under the name [REDACTED]. Counsel contends that the beneficiary is eligible for relief under section 245(i)(1) of the Act, 8 U.S.C. § 1255(i)(1).

In addition to other evidence, the record contains a document signed by the applicant on May 19, 2004 that indicates that the applicant entered the United States in October 1997 through the Canadian border under the name [REDACTED] and "admitted to the Immigration Inspector that she was a United States citizen enroute to Chicago, Illinois." The statement further indicates that the applicant entered the United States in December 2000 under the name [REDACTED] using a tourist visa.

The director found the applicant inadmissible under section 212(a)(6)(C)(ii) of the Act based on her falsely claiming citizenship before an immigration inspector in order to gain admission into the United States.

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 chapter 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 chapter . . . is inadmissible.

. . . .

(iii) Waiver authorized

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

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant who is the spouse, 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 that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien . . .

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. The signed statement by the applicant indicates that the false claim to U.S. citizenship was made to an immigration inspector after September 30, 1996. Accordingly, based on the provisions of the Act, she is ineligible to apply for a Form I-601 waiver. The applicant is therefore inadmissible under section 212(a)(6)(C)(ii) of the Act and ineligible for waiver of the grounds of her inadmissibility.

It is noted that penalty-fee adjustment of status allows an alien who entered the United States without inspection to pay a fee and to apply for adjustment of status to that of lawful permanent resident. INA section 245(i), 8 U.S.C. § 1255(i)(1). To be eligible, the alien must be the beneficiary of a petition under 8 U.S.C. § 1154 that was filed before April 30, 2001, and if such petition was filed after January 14, 1998, he must have been physically present in the country on December 21, 2000. 8 U.S.C. § 1255(i)(1)(B)-(C). If an alien satisfies these criteria, the Attorney General may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and an immigrant visa is immediately available to the alien at the time the application is filed. 8 U.S.C. § 1255(i)(2). As previously stated, the record reveals that the applicant here is inadmissible due to her false claim to U.S. citizenship. Admissibility is defined by INA § 212, 8 U.S.C. § 1182. The applicant is not eligible to adjust status under INA section 245(i) as she is inadmissible and no waiver is available.

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.