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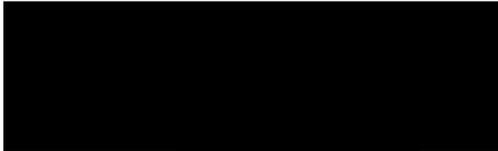
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529



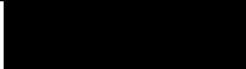
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CHICAGO, ILLINOIS

Date: OCT 01 2007

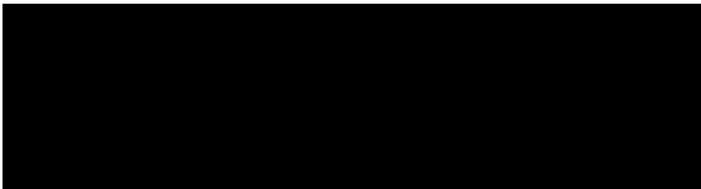
IN RE:

Applicant:



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:



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 as the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), thus the relevant waiver application is moot.

The applicant, [REDACTED] is a native and citizen of Mexico 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant is married to a nationalized citizen of the United States. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding that [REDACTED] failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated February 28, 2005. Counsel submitted a timely appeal.

The AAO will first address the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

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 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. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the

false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by [REDACTED] Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

On appeal counsel states that the applicant came to the United States in 1993 by crossing the border from Mexico and was traveling on a bus in Abilene, Texas, when the United States border patrol stopped the bus and asked the applicant for documents. Counsel states that at that time the applicant presented a birth certificate belonging to [REDACTED], the U.S. citizen sister-in-law of the applicant. The applicant, counsel states, was taken by an officer to an Immigration and Naturalization Service (INS) office, where the applicant was asked about her parents, siblings, and grandparents. Counsel states that the applicant answered all questions truthfully, and was returned to Mexico the same day. Counsel contends that the applicant did not present a fraudulent birth certificate so to gain admission to the United States and that she was arrested by border patrol after she was in the United States and past the international boundary. Counsel asserts that the applicant did not falsely represent that she was a United States citizen in order to obtain a benefit under the Act or any federal or state law, and he cites *Pichardo v. INS*, 216 F.3d 1198 (9<sup>th</sup> Cir. 2000) in support of his assertion.

In the instant case, the record reflects that in 1993 on a bus in Texas the applicant presented a U.S. citizenship certificate to an INS agent "in an attempt to remain in the United States." The memorandum by [REDACTED] indicates that the fraud or material misrepresentation must have been made to a U.S. government official in order to procure a "specific benefit under the Act, such as a visa, admission, or immigration document (i.e. a U.S. passport)." The AAO finds that no evidence in the record indicates that the false claim to citizenship was made to procure an immigration benefit under the Act such as a visa or immigration document (i.e. a U.S. passport).

Furthermore, the record indicates that the applicant, who was a passenger on a bus that had been stopped by the U.S. border patrol, had already entered the United States when she made the false claim to citizenship. The Board of Immigration Appeals (BIA) in *Matter of Pierre*, 14 I. & N. Dec. 467, 468 (1973) states that:

An "entry" involves (1) a crossing into the territorial limits of the United States, i.e. physical presence; plus (2) inspection and admission by an immigration officer; or (3) actual and intentional evasion of inspection at the nearest inspection point; coupled with (4) freedom from restraint.

(citations omitted)

In defining "restraint," the BIA included surveillance that is unknown to the alien. The BIA states that an alien has not made an entry despite having crossed the border with the intention of evading inspection, if he "lacks the freedom to go at large and mix with the population." (citing *Ex parte Chow Chok*, 161 Fed. 627, 629-30, 632 (N.D.N.Y.), aff'd 163 Fed. 1021 (C.A. 2, 1908).

Here, the applicant was a passenger on a bus that had been stopped by the U.S. border patrol in Texas. No

documentation in the record suggests that the applicant had been under surveillance by the U.S. border patrol prior to her entry into the United States. Based on the record, and the decisions discussed above, the AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The waiver filed pursuant to section 212(i) of the Act is therefore moot. As the applicant is not required to file the waiver, the appeal of the denial of the waiver will be dismissed.

**ORDER:** The February 28, 2005 decision of the director is withdrawn. The appeal is dismissed as the underlying application is moot.