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



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: FRESNO, CA

Date:

OCT 19 2007

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.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Field Office Director, Fresno, California, denied the waiver application, and it 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 is 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 representing herself to be a citizen of the United States. The applicant is the spouse of a U.S. citizen and mother of two U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse and children.

The field office director concluded that there is no waiver available under section 212(i) or any other section of the Act for those who have, at any time after September 30, 1996, falsely represented themselves to be citizens of the United States and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of Field Office Director*, dated July 19, 2007.

The record shows that, on December 3, 1998, the applicant attempted to enter the United States at the San Ysidro, California Port of Entry by verbally stating that she was born in Anaheim, California. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(ii) and 212(a)(7)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § § 1182(a)(6)(C)(ii) and 1182(a)(7)(A)(i)(I), for falsely claiming to be a U.S. citizen and for being an immigrant without valid entry documents. On December 4, 1998, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). On October 31, 2006, the applicant married her spouse, [REDACTED]. On March 13, 2007, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by [REDACTED]. On July 2, 2007, the applicant appeared at Citizenship and Immigration Services' (CIS) Fresno, California Field Office. The applicant testified that she had entered the United States by presenting a Mexican passport belonging to someone else in May 1999. The applicant also admitted that she had been removed from the United States for making a false claim to U.S. citizenship in 1998. On March 16, 2007, the applicant filed the Form I-601 with documentation supporting her claim that extreme hardship would be imposed on her spouse and children.

On appeal, counsel contends that the district director erred in finding that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act because it is categorically incorrect to preterm a waiver on account of a false claim to U.S. citizenship when such a claim was made only by a passive response to an immigration officer's leading question and was never affirmatively asserted. Counsel contends that the applicant's passive claim to U.S. citizenship was retracted when faced with the slightest questioning. Counsel contends that the applicant's family members would suffer extreme hardship if she were denied a waiver due to their medical conditions. *See Counsel's Brief*, dated August 27, 2007. The entire record was reviewed and considered in rendering a decision in this case.

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. –

a. 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.

b. Exception-

In the case of an alien making a representation described in subclause (I), if each natural parents 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 provision authorizing waiver of clause (i), see subsection (i).

On appeal, counsel asserts that the applicant merely automatically nodded her head “yes” to the immigration officer’s question of whether she was a U.S. citizen and that she immediately retracted her response at the slightest questioning of the immigration officer. Counsel asserts that the applicant was afraid that she would be unable to see her family and was under severe compulsion and pressure to sign the declaration stating she had made a false claim to U.S. citizenship, if only to be able to see her family in the United States again.

In her affidavit, on appeal, the applicant states that she did not expressly state that she was a U.S. citizen when attempting to enter the United States in 1998. The applicant states that she simply nodded her head to an immigration officer’s question as to whether she was a U.S. citizen. She states that, after she was taken to secondary inspection, she informed the immigration officers that she had an application filed with CIS but that the immigration officers were unable to locate her information. She states that the immigration officers threatened to detain her if she did not sign a declaration stating that she had falsely informed them that she was a U.S. citizen. She states that she never meant to convey any false impression or information about her immigration status when she nodded yes to the question of being a U.S. citizen.

While the applicant claims that she did not make an affirmative claim to U.S. citizenship and that she signed a declaration out of fear of detention, the Record of Sworn Statement In Proceedings under Section 235(b)(1) of the Act (Form I-867A) does not support these assertions. The Form I-867A indicates that the applicant was asked, in Spanish, if she was willing to answer the questions of the immigration officer and would swear or

affirm that her responses would be truthful. The applicant responded affirmatively and when asked how she had attempted to enter the United States, she stated that she had claimed to have been born in Anaheim, California. The Form I-867A also indicates that the applicant knew she did not have any applications pending before CIS at the time of her attempt to enter the United States. The record reflects that the applicant was not under the misconception that she was a U.S. citizen at the time she claimed to have been born in Anaheim, California and that she was aware that it was illegal to falsely claim to be a U.S. citizen. The record also reflects that the applicant failed to provide correct information in regard to her immigration status until after she was referred to secondary inspection. Accordingly, the AAO finds that the applicant made an affirmative oral claim to U.S. citizenship in attempting to enter the United States in 1998. The AAO also finds that the applicant is ineligible for the exception to the inadmissibility grounds for falsely representing that she was a U.S. citizen.

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act and no waiver available to the applicant under this ground of inadmissibility. Accordingly, the appeal will be dismissed.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.