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



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

H2



FILE:



Office: MINNEAPOLIS, MN

Date: OCT 07 2008

IN RE:



PETITION: Application for Waiver of Ground 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.

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 Field Office Director, Minneapolis, Minnesota and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot. The matter will be returned to the field office director for continued processing.

The applicant is a native and citizen of Canada 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 having attempted to procure admission to the United States by falsely claiming U.S. citizenship on April 17, 2006. The applicant is married to a U.S. citizen and has four 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 family.

The field officer director concluded that, as the applicant had violated section 212(a)(6)(C)(ii) of the Act by falsely claiming to be a U.S. citizen, no waiver of inadmissibility was available to her. The waiver application was denied accordingly. *Decision of the Field Office Director*, dated August 20, 2008.

On appeal, counsel contends that the applicant is not inadmissible under section 212(a)(6)(C)(ii) of the Act as a false claim to citizenship must be made with knowing intent and the applicant had no such intent on April 17, 2006. He further asserts that, in denying the Form I-601, Application for Waiver of Grounds of Inadmissibility, Citizenship and Immigration Services (CIS) failed to consider the evidence submitted in support of the Form I-601 or make a determination of the applicant's credibility. *Form I-290B, Notice of Appeal or Motion*, dated September 9, 2008.

The record reflects that the applicant originally entered the United States as a student. She graduated from the University of North Dakota on May 15, 1994 and was authorized practical training. On November 26, 1994, the applicant married her U.S. citizen spouse, [REDACTED]. The applicant has lived in the United States with her husband since their marriage. On April 17, 2006, the applicant, returning to the United States after visiting Canada, was refused admission at the Walhalla, North Dakota port of entry under section 212(a)(7)(A)(i)(I) of the Act for being an immigrant not in possession of valid entry or travel documents. On May 8, 2006, the applicant was admitted to the United States as a nonimmigrant visitor through the Pembina, North Dakota port of entry. She has since remained in the United States. On September 15, 2008, the acting field office director, Minneapolis, Minnesota issued a Notice to Appear (NTA) to the applicant notifying her of her unlawful presence in the United States as of November 7, 2006.¹

¹ Canadians who are not issued a Form I-94 at the time of their admission to the United States do not accrue unlawful presence until such time as an immigration judge determines them to have violated status or Citizenship and Immigration Services (CIS), in adjudicating an application for a benefit, finds a status violation has occurred. The applicant in this matter applied for adjustment of status and, at the time of her interview, was found to have overstayed her May 8, 2006 nonimmigrant admission. With CIS' issuance of the NTA, the applicant began accruing unlawful presence for the purposes of section 212(a)(9)(B)(i) of the Act. The AAO notes that the applicant's accrual of unlawful presence began on September 15, 2008, the date on which the NTA was issued, rather than the November 7, 2006 date on which her nonimmigrant admission expired. Should the applicant depart the United States after accruing more than 180 days of unlawful presence, she will be subject to the provisions of section 212(a)(9)(B)(i)(I) of the Act.

The AAO now turns to a consideration of the applicant's inadmissibility under section 212(a)(6)(C) of the Act, which provides:

(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 record includes a type-written synopsis of the applicant's April 17, 2006 inspection, which reports that during her primary inspection she initially claimed that she was a U.S. citizen. However, after indicating that she had been born in Canada, the report continues, the applicant then asserted to the immigration inspector that she held lawful permanent resident status in the United States, but had left her alien resident card at home. In secondary inspection, the applicant was confronted with the fact that she was not listed in immigration data bases as a U.S. citizen or lawful permanent resident. Only then, the report indicates, did she admit that she was a Canadian citizen who had no authorization to reside in the United States.

In support of the Form I-601, the applicant submitted a statement in which she contends that her affirmative response to the immigration inspector's initial question about whether the persons in her automobile held U.S. citizenship referred to her U.S. citizen passengers. She further asserts that when asked immediately thereafter where she had been, she informed the inspector that she had been in Canada visiting family and, in response to his question about her place of birth, told him she had been born in Canada. The applicant further claims that she did not state that she was a lawful permanent resident of the United States, but that she was a resident of Grafton, North Dakota and that the documents to which she referred at the time of her inspection were documents establishing her residence in Grafton. She asserts that, at the time of her inspection, she was unfamiliar with the terms lawful permanent resident and permanent resident card.

Having reviewed the evidence of record, the AAO does not find it to support a finding that the applicant made a false claim to U.S. citizenship on April 17, 2007 or that she alternately presented herself as a lawful permanent resident. The record contains no sworn statement from the applicant, taken at the time of her secondary inspection or thereafter, that demonstrates she attempted to enter the United States by claiming U.S. citizenship or lawful permanent residence. The only documentation of the applicant's claims to

citizenship and permanent residence is the aforementioned synopsis of the applicant's April 17, 2006 inspection, a statement that is not signed or dated, and which cannot, therefore, be determined to be contemporaneous with the applicant's inspection or written by personnel with direct knowledge of the events discussed. The AAO also notes that, despite the misrepresentations attributed to her, the applicant was not refused admission under section 212(a)(6)(C)(i) or (ii) of the Act for presenting herself as a lawful permanent resident or for having made a false claim to U.S. citizenship. Instead, immigration inspectors found her to be an immigrant lacking appropriate entry or travel documents and, therefore, inadmissible under section 212(a)(7)(A)(i)(I) of the Act. Absent evidence to the contrary, the AAO finds the inspectors' reliance on section 212(a)(7)(A)(i)(I) to exclude the applicant from the United States to be sufficient proof that the applicant's misrepresentations at the port of entry were not found to be willful misrepresentation of a material fact under section 212(a)(6)(C)(i)(I) of the Act or a false claim to U.S. citizenship under section 212(a)(6)(C)(ii).

As the record fails to establish that the applicant is inadmissible under section 212(a)(6)(C)(i) or (ii) of the Act, the applicant is not required to file the Form I-601. Accordingly, the appeal will be dismissed as the underlying waiver application is moot and the matter will be returned to the field office director for continued processing.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.