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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **APR 11 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Director, California Service Center, 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. On January 9, 1997, the applicant's daughter, [REDACTED] was born in California. On May 3, 1998, the applicant attempted to enter the United States by falsely claiming United States citizenship. On the same day, the applicant was expeditiously removed to Mexico. On August 16, 1998, the applicant's son, [REDACTED], was born in California. On June 2, 2004, the applicant's son, [REDACTED], was born in California. At some unknown date, the applicant reentered the United States without inspection. On May 7, 2006, the applicant married [REDACTED], a United States citizen, in California. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), and 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii). He now seeks permission to reapply for admission into the United States, in order to reside with his United States citizen wife and United States citizen children.

The director determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming United States citizenship, and "[s]ince [the applicant's] oral false claims to United States citizenship on or after 09/30/96, [the applicant is] inadmissible, without any special rules or waivers considered." *Director's Decision*, dated March 1, 2007. The director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Id.*

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

. . . .

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous

territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

Section 212(a)(6). Illegal entrants and immigration violators.-

(A) Aliens present without admission or parole.-

(i) In general.- An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General [now, Secretary, Department of Homeland Security], is inadmissible.

(C) Misrepresentation.-

(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.

The AAO notes that aliens making false claims to United States 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. As the applicant's false claim to United States citizenship occurred after September 30, 1996, the applicant is clearly inadmissible to the United States and not eligible for a waiver under section 212(a)(6)(C)(ii) of the Act. Additionally, the applicant is inadmissible under section 212(a)(6)(A)(i) of the Act and section 212(a)(9)(A)(ii) of the Act, for being present without admission or parole and for being ordered removed.

On appeal, the applicant, through counsel, states the applicant "never 'made' a false claim to United States citizenship.... [The applicant] believes that he immediately recanted his claim to citizenship and immediately told the officer before he inquired that he not a U.S. citizen. Nevertheless, he sent him to another officer where he again told him he was not a United States citizen." *Form I-290B*, filed March 13, 2007. The applicant claims that after he told the first officer that he was an American citizen, he "immediately recanted and said 'I am sorry I am not a Citizen of the United States'... he changed his mind immediately upon confronting the first Officer that he had contact with." *Affidavit from the applicant*, dated March 8, 2007. The AAO notes that the applicant orally presented himself to be a United States citizen by virtue of birth in Los Angeles, California. *Record of Deportable/Inadmissible Alien* (Form I-213), dated May 3, 1998. When the primary inspection officer suspected the applicant of attempting admission into the United States by making an oral false claim to United States citizenship, the officer referred the applicant to secondary inspection, where the applicant admitted to his true nationality and citizenship. *Id.* The applicant states he has been residing in the United States since May 7, 1993, and only returned to Mexico to attend his aunt's funeral. *Affidavit from the applicant, supra.*

*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.

The applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act. No waiver is available to an alien who has made a false claim to United States citizenship; therefore, 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 Form I-212 was properly denied by the director.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.