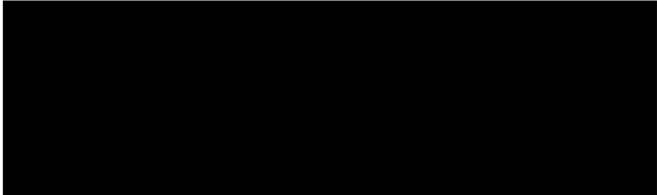


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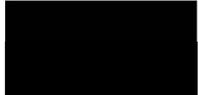
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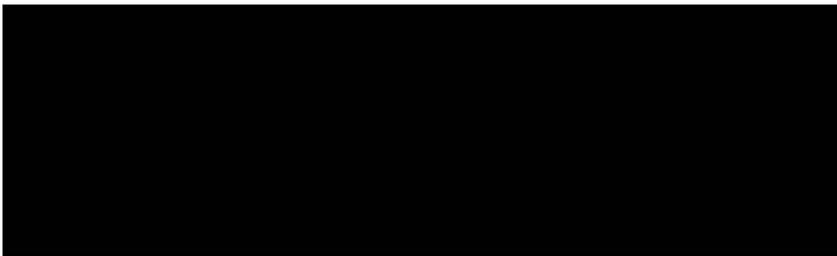
Applicant:



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:



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 Field Office Director, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who attempted to reenter the United States by falsely claiming United States citizenship on July 25, 2003. On the same day, the applicant was expeditiously removed to Canada. On November 9, 2003, the applicant married [REDACTED] a United States citizen, in Canada. On November 20, 2003, the applicant's wife filed a Petition for Alien Fiancé(e) (Form I-129F) and a Petition for Alien Relative (Form I-130) on behalf of the applicant. On December 1, 2004, the applicant's Form I-129F was approved. On June 1, 2005, the applicant filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On December 27, 2005, the Director, Field Operations, U.S. Customs and Border Protection, found the applicant filed the wrong form, referred him to file an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212), and stated he would hold the applicant's Form I-192 until the Form I-212 was adjudicated. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(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.

The Field Office Director determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact in order to enter the United States, section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for making a false claim to United States citizenship, and section 212(a)(7)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(i)(I), for not possessing a valid immigrant document. The Field Office Director found that since "there is no relief from inadmissibility pursuant to Section 212(a)(6)(C)(ii) false claim to United States citizenship, [the applicant's] positive and negative equities will not be discussed" and he denied the applicant's Form I-212 accordingly. *Field Office Director's Decision*, dated March 21, 2007.

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

(A) Certain alien previously removed.-

(i) Arriving Aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(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.-

(C) Misrepresentation.-

(i) In general.-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.

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

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)(iii) of the Act. Additionally, the applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, for being ordered removed under section 235(b)(1) of the Act, and section 212(a)(6)(C)(i) of the Act, for willfully misrepresenting a material fact in order to gain entry into the United States.

On appeal, the applicant, through counsel, asserts that the Field Office Director "erred in finding that the Applicant is inadmissible pursuant to INA Section 212(6)(a)(C)(ii) [sic] ('False Claim') as an alien who has made a false claim to United States citizenship." *Appeal Brief*, page 2, filed May 21, 2007. Counsel contends that the applicant "was removed for Misrepresentation, NOT False Claim. CBP Inspector Terry did not make

a False Claim charge – even though there is *prima facie* evidence in the Applicant’s Sworn Statement.” *Id.* at 4. The AAO notes that even though the applicant was not expeditiously removed under section 212(a)(6)(C)(ii) of the Act, he is inadmissible for making a false claim to United States citizenship. The AAO conducts the final administrative review and enters the ultimate decision for USCIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case *de novo* as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in *de novo* review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Additionally, the AAO notes that the applicant has been falsely claiming United States citizenship for years. Counsel contends that “[p]erhaps CBP Inspector Terry applied the doctrine of **timely retraction** with respect to the statements referencing citizenship.” *Appeal Brief, supra* at 5. However, the AAO notes that there is no evidence in the record that the applicant made a timely retraction of his United States citizenship claim. In fact, the applicant made two separate claims of United States citizenship on July 25, 2003. *See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated July 25, 2003. Additionally, the AAO notes that the applicant admitted to falsely claiming United States citizenship in May, 2003, and during at least three other border crossings. *Id.*

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Commr. 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 Field Office 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.