

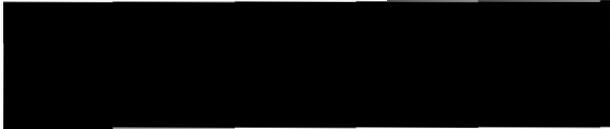
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: ROME, ITALY Date: JUN 16 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 District Director, Rome, Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Morocco who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant was also found to be inadmissible under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. 1182(a)(6)(C)(ii), for having made a false claim of U.S. citizenship for the purposes of obtaining employment. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant initially entered the United States as a visitor for pleasure on October 20, 1999 with authorization to remain in the United States for a period of six months. The applicant remained in the United States until December 9, 2001, when she left under an order of voluntary departure. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States and reside with her spouse.

The district director concluded that the applicant was statutorily ineligible for a waiver of grounds of inadmissibility because she is inadmissible under section 212(a)(6)(C)(ii) of the Act and there is no waiver for this ground of inadmissibility. The application was denied accordingly. *See Decision of District Director* dated February 6, 2006.

On appeal, counsel asserts that the applicant did not make a false claim of U.S. Citizenship when filling out Form I-9 in connection with an application for employment in July 2001. Specifically, counsel states that the applicant did not check a box on Form I-9 indicating she was a citizen or national of the United States, but the prospective employer told her to sign the form and that it would be filled out later. *See letter from counsel submitted in support of the appeal*, dated March 1, 2006. Counsel additionally asserts that the applicant qualifies for a waiver pursuant to section 212(a)(9)(B)(v) of the Act because her U.S. citizen husband is suffering extreme hardship due to being separated from the applicant. In support of this claim, the applicant submitted with the waiver application a letter from a physician stating that the applicant's husband is suffering from mild depression and anxiety brought about by separation from the applicant. The applicant also submitted a letter from her husband describing the emotional and psychological effects of their ongoing separation and stating that he would like to have children and raise a family with the applicant in the United States.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
- (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

- (v) Waiver. – The Attorney General [now Secretary, Homeland Security, “Secretary”] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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 (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 applicant in this case completed and signed Form I-9 when applying for employment in July 2001. On that form, which is included in the record, the applicant checked a box indicating that she is a citizen or national of the United States. On appeal counsel asserts that the manager who was hiring the applicant “hurried her to sign the form, and told her not to worry about filling out out, that she would fill it out later.” See *letter from counsel submitted in support of the appeal*, dated March 1, 2006. Contrary to this assertion, the applicant stated under oath when questioned by immigration authorities on September 24, 2002 that she did claim to be a U.S. Citizen when filling out Form I-9. See *Attachment to Form I-867, Record of Sworn Statement*, signed by the applicant and dated September 24, 2002. Counsel claims that the applicant misunderstood the question “given her limited abilities in English,” and did not have an opportunity to explain that she did not complete the I-9 form that she had signed. See *letter from counsel at paragraph 7*. The AAO notes, however, that the applicant was clearly asked by the officer if she understood his questions in English and was offered an interpreter. She replied, “English is fine.” Further, there is no indication that during the questioning the applicant had any difficulty understating the questions, and the applicant initialed each page and signed the statement, indicating that she had read the statement and all the answers were true and correct. See *Attachment to Form I-867, Record of Sworn Statement, and Form I-867B, Jurat for Record of Sworn Statement*. The finding that the applicant is inadmissible under section 212(a)(6)(C)(ii) is supported by the record, which includes the Form I-9, signed by the applicant and containing a statement that she is a citizen or national of the United States, and a subsequent sworn statement in which she admitted under oath the false claim to U.S. citizenship. There is no waiver available for this ground of inadmissibility.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established eligibility for a waiver under section 212(a)(9)(B)(v) for her unlawful presence in the United States or whether she would merit the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden.

ORDER: The appeal is dismissed.