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U.S. Citizenship  
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FILE: [REDACTED] Office: MEXICO CITY (PANAMA CITY) Date: **OCT 29 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:

SELF-REPRESENTED

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, Mexico City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Venezuela 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. 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 in 1987 at the age of fourteen, and remained in the United States until October 2, 1998, when he was removed from the United States after having been convicted of dealing in firearms. *See Notice to Appear* dated August 27, 1998 and *Form I-205, Warrant of Removal/Deportation* dated October 2, 1998. The applicant reentered the United States at San Diego, California in January 1999 by presenting a New York state identification card and claiming to be a U.S. Citizen. *See Form I-215B, Applicant's Record of Sworn Statement in Affidavit Form* dated October 23, 2001. On October 23, 2001 the applicant's prior removal order was reinstated and he was convicted of illegal reentry after removal on July 9, 2002. *See U.S. District Court, Eastern District of Virginia, Judgment in a Criminal Case* dated July 9, 2002. The applicant was removed to Venezuela on March 21, 2005 after completing his prison sentence. *See Form I-205, Warrant of Removal/Deportation* dated March 21, 2005. 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 his spouse.

The district director concluded that the applicant was statutorily ineligible for a waiver of grounds of inadmissibility because he is inadmissible under section 212(a)(6)(C)(ii) of the Act and there is no waiver for this ground of inadmissibility. The district director further determined that the applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for which no waiver is available. The application was denied accordingly. *See Decision of District Director* dated July 21, 2006.

On appeal, the applicant asserts that he did not claim to be a U.S. Citizen when he crossed the border from Tijuana, Mexico, but only presented his New York drivers license to the immigration officer. *See letter from the applicant* dated August 4, 2006. The applicant further asserts that he qualifies for a waiver of section 212(a)(9)(C)(i)(II) of the Act for illegally entering the United States after being ordered removed because he was battered or subject to extreme cruelty in Venezuela. *See letter from the applicant* dated August 4, 2006. The applicant further claims that denial of the waiver application would result in extreme hardship to his U.S. Citizen wife and lawful permanent resident mother. In support of the waiver application and appeal the applicant submitted letters from his wife, mother, and other relatives; financial documents including bank statements and credit card bills; and documentation of conditions in Venezuela. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 signed a Record of Sworn Statement in Affidavit Form stating, “I crossed the border at San Diego. I showed the immigration inspector my N.Y.I.D. and said I was an American citizen.” *See Form I-215B, Applicant’s Record of Sworn Statement in Affidavit Form* dated October 23, 2001. The finding that the applicant is inadmissible under section 212(a)(6)(C)(ii) is supported by evidence on the record, specifically the signed sworn statement in which the applicant stated under oath that he had falsely claimed to be a U.S. citizen when inspected by an immigration officer in January 1999. There is no waiver available for this ground of inadmissibility.

The AAO further notes that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act for illegally entering the United States after being ordered removed by an immigration judge. Although he claims to be eligible for a waiver pursuant to section 212(a)(9)(C)(iii) because he was the victim of battery or extreme cruelty, this waiver is only available to self-petitioners under the Violence Against Women Act (VAWA). The applicant is not the beneficiary of a VAWA self-petition and he is not eligible for a waiver of section 212(a)(9)(C)(i)(II) of the Act.

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) of the Act for his unlawful presence in the United States or whether he 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 his burden.

**ORDER:** The appeal is dismissed.