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



U.S. Citizenship
and Immigration
Services

H4



FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JUL 07 2005

IN RE:

Applicant:



APPLICATION:

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

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.

Robert P. Wiemann, Director
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 a citizen of Mexico who was present in the United States without a lawful admission or parole on or about August 1, 1991. On September 8, 1999, the applicant was apprehended and was served with a Notice to Appear for a hearing before an Immigration Judge. On October 5, 1999, the applicant was granted voluntary departure in lieu of deportation until October 6, 1999. The applicant departed the United States on October 6, 1999. The record reflects that on June 14, 2002, at the San Ysidro, California Port of Entry the applicant applied for admission into the United States. He orally represented himself to be a citizen of the United States by birth in Los Angeles, California. The applicant 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), as an alien who falsely represents herself to be a citizen of the United States for any purpose or benefit under this Act and section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa or other valid entry document. Consequently the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to travel to the United States to reside with his U.S. citizen spouse and child.

The Director determined that the applicant is not eligible for any exception or waiver under section 212(a)(6)(C)(ii) of the Act and that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director then denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. See *Director's Decision* dated October 11, 2004

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens 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 five 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.

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(iii) Exception. - Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress

has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal counsel submits a brief, copies of the applicant's marriage certificate, his child's birth certificate, an affidavit from the applicant's spouse and a copy of an AAO decision. Counsel's brief and the applicant's spouse's affidavit both address the applicant's character and the hardship his family would suffer if he were not permitted to reside in the United States. In his brief counsel does not dispute the fact that the applicant attempted to enter the United States on June 14, 2002, by falsely claiming U.S. citizenship but states that he did so after he was told he would not be able to return to the United States until an Application for Waiver of Grounds of Inadmissibility (Form I-601) was approved. According to counsel the applicant attempted to reenter the United States because of his separation from his family, his family responsibilities and the fact that his spouse and child were suffering hardship due to his absence. Counsel submits a copy of an AAO decision in which the Form I-212 was approved. Counsel states that the facts in both cases are similar. The applicant in the referenced AAO decision attempted entry to the United States by falsely claiming U.S. citizenship on December 15, 1995, and again on January 5, 1997. In both instances he was excluded and deported.

Prior to the enactment of IIRIRA a false claim to U.S. citizenship was grounds of inadmissible under section 212(a)(6)(C)(i) of the Act relating to fraud or willful misrepresentation of a material a material fact, in an attempt to procure admission into the United States or other benefit provided under the Act. Therefore the applicant's December 15, 1995, claim to U.S. citizenship does not fall under section 212(a)(6)(C)(ii) of the Act. On January 9, 1997, the applicant in the referenced case was excluded and deported pursuant to section 212(a)(7)(A)(i)(I) of the Act and not 212(a)(6)(C)(ii) of the Act.

In the present case the record clearly reflects, and counsel does not dispute, the fact that the applicant represented himself as a citizen of the United States in order to gain admission into the United States at the San Ysidro, California Port of Entry on June 14, 2002. He was excluded and removed under section 212(a)(6)(C)(ii) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(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.

There is no waiver available under this section of the Act.

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.

Notwithstanding the arguments on appeal the applicant was removed from the United States for having represented himself as a U.S. citizen. The applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act, which are very specific and applicable. 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. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.