

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

fly

PUBLIC COPY

[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: AUG 16 2006

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Permission to Reapply for Admission after Removal into the United States after Deportation 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:

[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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center on August 26, 2004. The Administrative Appeals Office (AAO) dismissed an appeal on June 14, 2005. The matter is now before the AAO on a Motion to Reopen<sup>1</sup> (MTR). The motion will be granted, the AAO order dismissing the appeal will be affirmed and the application denied.

The applicant is a native and citizen of Mexico who on September 29, 1999, at the Phoenix Sky Harbor Airport applied for admission to the United States. She represented herself to be a citizen of the United States and presented an Arizona birth certificate that did not belong to her. 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 she was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record reflects that on October 3, 1999, the applicant again applied for admission into the United States at the San Luis, Arizona Port of Entry orally representing herself to be a U.S. citizen. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, and was expeditiously removed to Mexico pursuant to section 235(b)(1) of the Act. On February 16, 2001, the applicant appeared at a Citizenship and Immigration Services (CIS) office for a scheduled interview regarding a Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse. The applicant admitted having reentered the United States on or about October 4, 1999, without a lawful admission or parole, and without permission to reapply for admission in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). On the same day a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), and the applicant was removed to Mexico. 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 her U.S. citizen spouse and children.

The Director determined that section 241(a)(5) of the Act, applies in this matter and the applicant is not eligible and may not apply for any relief. The Director then denied the application accordingly. *See Director's Decision* dated August 26, 2004. On appeal, the AAO 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) as an alien who falsely represents herself to be a citizen of the United States for any purpose or benefit under this Act. In addition, the AAO determined that no waiver is available to her under the Act and dismissed the appeal accordingly. *See AAO decision*, dated June 14, 2005.

In his motion, the applicant's representative submits a brief in which he states: "Applicant [REDACTED] appeals on the grounds, including but not limited to, (1) the administrative judge abused his discretion by the dismissal of the appeal when the facts did not support Applicant [REDACTED] made the representation with knowledge the representations at the time they were made were in fact false, (2) the record relied upon by the administrative judge was insufficient to sustain the government's burden of proof of a preponderance for the evidence that the alleged false representations were intentionally represented by Applicant [REDACTED] with knowledge of its falsity. This is insufficient evidence to establish the required element of scienter required in the Act, Section 212(a)(6)(C), (3) there is insufficient evidence that Applicant [REDACTED] made the

---

<sup>1</sup> The AAO notes that the applicant's representative filed a Notice of Appeal to the AAO (Form I-290B) and a brief stating that applicant is appealing the Director's order. It is noted that AAO decisions cannot be appealed and, therefore, the AAO will accept the Form I-290B and the brief as a motion to reopen.

representations with the intent to be a citizen of the United States for any purpose or benefit under the Act required pursuant to section 212(a)(6)(C)(ii)(I) and (4) section 212(a)(6)(C)(ii)(I) and or Section 212(a)(6)(C)(ii)(II) is over broad, vague, and ambiguous, resulting in the denial of Applicant [REDACTED] due process and equal protection right guaranteed under the Fourth Amendment of the United States Constitution. Applicant [REDACTED] specifically reserves the right to amend, change, and supplement this notice in her discretion.

The applicant's representative's assertions are not persuasive. The record of proceedings contains two Records of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867B). In the first, dated September 29, 1999, the applicant admitted under oath that she represented herself to be a citizen of the United States by presenting a U.S. birth certificate that she had borrowed from a friend of hers, in order to gain admission into the United States. On the same date, she admitted that she knew that it is against the law to present a birth certificate to the Immigration and Naturalization Service. In the second Form I-867B, dated October 3, 1999, the applicant admitted under oath that she orally claimed to be a U.S. citizen to an immigration inspector in order to gain entry into the United States and she knew that it was against the law. Based on the applicant's sworn statements, it is established that she falsely represented herself to be a citizen of the United States in order to gain a benefit under the Act (admission into the United States).

Although the applicant's representative states that her rights to procedural due process were violated, she has not shown that any violation of the regulations resulted in "substantial prejudice" to her. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). A review of the record and the adverse decision indicates that the Director properly applied the statute and regulations to the applicant's case. Accordingly, the applicant's claim is without merit. Finally section 212(a)(6)(C)(ii)(I) of the Act is not vague and ambiguous as stated by the applicant's representative.

Section 212(a)(6)(C) of the Act states in pertinent part:

(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.

As noted above, section 212(a)(6)(C)(ii) of the Act, is very specific and applicable. No waiver of the ground of inadmissibility under section 212(a)(6)(C)(ii) of the Act 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. Accordingly, AAO's prior decision dismissing the appeal will be affirmed.

**ORDER:** The order of June 14, 2005, dismissing the appeal is affirmed and the application is denied.