



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 07 2006

IN RE: [REDACTED]

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: 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who, on January 21, 2002, applied for admission to the United States at the Nogales, Arizona, Port of Entry. He made a false oral claim to U.S. citizenship and presented a U.S. Birth Certificate, belonging to another under the name [REDACTED]. He was found to be inadmissible 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), for falsely representing himself to be a citizen of the United States. On January 21, 2002, he was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). On January 22, 2002, the applicant was apprehended by immigration officers after he entered the United States without inspection. On the same day, the applicant was issued a Notice of Intent/Decision to Reinstate Prior Order. On January 26, 2002, a warrant for the applicant's removal was issued. On January 28, 2002, the applicant was removed from the United States pursuant to a reinstatement of the prior order of removal. The record reflects that the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date, but prior to January 22, 2003, the date on which he married his U.S. citizen spouse in Auburn, California. On February 24, 2003, the applicant's U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on his behalf. On November 15, 2004, the applicant filed the Form I-212. On December 23, 2004, the Form I-130 was approved. 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 remain in the United States and reside with his U.S. citizen spouse.

The director determined that the unfavorable factors in the applicant's case outweighed the favorable ones. Additionally, the director concluded that the applicant was statutorily ineligible to file an application for permission to reapply for admission for a period of ten years after his last departure from the United States. The director denied the Form I-212 accordingly. *See Director's Decision* dated June 29, 2005.

On appeal, the applicant's spouse contends that she will suffer hardship without the applicant and that he should be granted permission to reenter the United States. *See Affidavit*, dated July 25, 2005.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested.

Section 212(a)(6)(C)(ii) of the Act provides, 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 . . . is inadmissible.

II. Exception-

In the case of an alien making a representation described in subclause (I), if each natural parents 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.

Aliens making false claims to U.S. citizenship on or after September 30, 1996 are statutorily ineligible for a waiver of inadmissibility. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(ii) and 1182 (a)(6)(C)(iii). Therefore, if an alien makes a false claim to U.S. citizenship on or after September 30, 1996, the alien is subject to a permanent ground of inadmissibility.

The record in the instant case reflects that the applicant attempted to enter the United States by orally making a false claim to U.S. citizenship and presenting a U.S. birth certificate belonging to another. After being placed in secondary inspection, the applicant admitted that he was not a U.S. citizen and was expeditiously removed from the United States pursuant to section 212(a)(6)(C)(ii) of the Act. The record reflects that the applicant was not under the misconception that he was a U.S. citizen at the time he made the false claim to U.S. citizenship and that both of his parents were citizens of Mexico. The AAO finds that the applicant is ineligible for the exception to the inadmissibility grounds for falsely representing that he was a U.S. citizen.

The AAO therefore finds that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act and that there is no waiver available to the applicant under this ground of inadmissibility. *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.

The applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act, which are very specific and applicable. 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 appeal will be dismissed.

ORDER: The appeal is dismissed.