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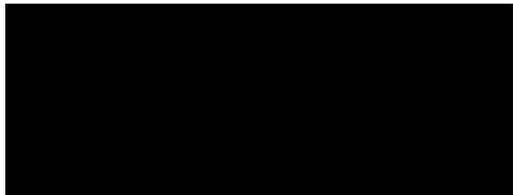
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

MAR 16 2006

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:

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, Director  
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, and 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 22, 1999, at the San Ysidro, California, Port of Entry, represented himself to be a citizen of the United States in order to gain admission into the United States. He orally represented himself to be a citizen of the United States by birth in Sun Valley, California. The applicant 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), as an alien who falsely represents himself to be a citizen of the United States for any purpose or benefit under the 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, on January 23, 1999, 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 record reflects that the applicant reentered the United States on or about February 15, 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). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. 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 and children.

The Director determined that section 241(a)(5) of the Act, 8 U.S.C. 1231(a)(5) applies in this matter and the applicant is not eligible and may not apply for any relief or benefit from his application. In addition, the Director determined that the applicant is not eligible for any exception or waiver under section 212(a)(6)(C)(ii) of the Act. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated October 7, 2004.

The AAO notes that the record contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28) that is not signed by the applicant. Therefore, the AAO will not be sending a copy of the decision to the individual mentioned on the Form G-28, but this office will accept the submitted information.

Section 241(a) of the Act states in pertinent part:

(5) **Reinstatement of removal orders against aliens illegally reentering.** If the Attorney General [now the Secretary of Homeland Security, "Secretary"] finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

On appeal, counsel states that the Director erred in finding that the applicant is statutorily ineligible for permission to reapply because he reentered the United States without permission or inspection. Counsel refers to the Ninth Circuit Court of Appeals decision, *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004).

In its August 14, 2004, decision, *Perez-Gonzalez v. Ashcroft, supra*, the Ninth Circuit Court of Appeals ruled that a Mexican national who returned to the United States following a deportation and had his deportation order reinstated may nonetheless obtain adjustment of status if his Form I-212 is granted. The Ninth Circuit Court of Appeals stated in *Perez-Gonzalez* that: “Given the fact that Perez-Gonzalez applied for the waiver before his deportation order was reinstated, he was not yet subject to its terms and, therefore, was not barred from applying for relief.” **The Court further states:** “Prior administrative decisions of the Bureau of Immigration Appeals confirm the fact that permission to reapply is available on a *nunc pro tunc* basis, in which the petitioner receives permission to reapply for admission after he or she has already reentered the country.” Finally the Court stated: “... if the alien has applied for permission to reapply in the context of an application to adjust status, the INS is required to consider whether to exercise its discretion in the alien’s favor before it can proceed with reinstatement proceedings...”

Since this case arises in the Ninth Circuit, *Perez-Gonzalez* is controlling. The AAO agrees with counsel and finds that the Director erred in denying the Form I-212 based on the fact that section 241(a)(5) of the Act is applicable in this case. Although the applicant is not subject to section 241(a)(5) of the Act, he is clearly inadmissible under section 212(a)(9)(A) of the Act.

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.

. . . .

(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 Secretary has consented to the alien's reapplying for admission.

On appeal, counsel states that the applicant never made a false claim to U.S. citizenship. In addition, counsel states what when the applicant presented himself for inspection and he was asked, “Where are you going” he replied “Sun Valley.” Counsel further states that when the applicant was asked for identification the applicant replied that he had none and he was sent to secondary inspection. Additionally, counsel states that the immigration inspector did not write on the Multiple Inspection Referral Form (Form I-443D) that the applicant made a false claim to U.S. citizenship. Furthermore, counsel states that he applicant speaks very little English; the sworn statement he signed was not translated to him; he was not told what the statement was or what it said; and because he was concerned with his son’s health he signed the document in order to be able to leave.

Counsel’s statements are not persuasive. On the Form I-443D the immigration inspector wrote “POS OFC/ SUN VALLEY” which means “possible oral false claim”. In addition, on January 23, 1999, the applicant

was interviewed with regard to his attempt to procure admission into the United States. The interview was conducted in the Spanish language and during the interview the applicant admitted that he attempted to gain admission into the United States by representing himself to be a U.S. citizen and stating that he was born in Sun Valley, California. A false representation of U.S. citizenship may be either an oral representation or one supported by an authentic or fraudulent document. In the present case, the applicant made an oral representation of U.S. citizenship in order to gain admission into the United States. The applicant is clearly inadmissible 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.

The applicant in the instant case does not qualify for the exception under section 212(a)(6)(C)(ii)(II) 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.

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. Accordingly, as the applicant is not admissible to the United States, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.