

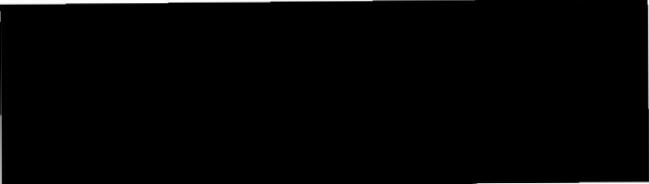


U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

flv



FILE:



Office: DALLAS, TEXAS

Date: MAR 28 2006

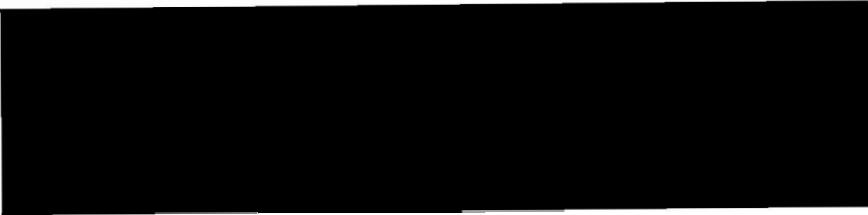
IN RE:

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:



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 District Director, Dallas, Texas, 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 2, 1999, at the Laredo, Texas, Port of Entry, represented herself to be a citizen of the United States in order to gain admission into the United States. The applicant presented a valid U.S. birth certificate that did not belong to her. She 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 herself 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, 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 the applicant reentered the United States on or about January 5, 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 June 23, 2003, the applicant appeared at a Citizenship and Immigration Services (CIS) office for a scheduled interview regarding an Application to Register Permanent Residence or Adjust Status (Form I-485). On August 25, 2003, 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 as a result, on September 10, 2003, 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 and reside with her LPR spouse and U.S. citizen children.

The District Director determined that the applicant is not eligible for any exception or waiver under section 212(a)(6)(C)(ii) of the Act and denied the Form I-212 accordingly. *See District Director's Decision* dated February 24, 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.

(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 the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On appeal, counsel states that the Form I-212 was wrongfully denied on the basis that the applicant is inadmissible without relief. In addition, counsel asserts that the applicant was not removed from Laredo, Texas in January 1999, but rather she exercised her right to voluntary departure and, therefore, she is not barred from reentering the United States. Counsel further states that the applicant's spouse and two children suffer hardship. Finally, counsel states that the department reinstated a voluntary departure order and made it a removal order whereas the record should show it was simply a voluntary departure administrative order.

Counsel assertions are not persuasive. On appeal, counsel states that the applicant was granted voluntary departure, whereas in her December 8, 2003 letter to CIS counsel acknowledged that the applicant was ordered removed in January 1999 and that the removal order was reinstated on September 9, 2003. In addition, the record of proceedings contains a Notice and Order of Expedited Removal (Form I-860), and a Record of Deportable/Inadmissible Alien (Form I-213), confirming the fact that the applicant was expeditiously removed on January 2, 1999, and was not granted voluntary departure. Furthermore, the record of proceedings contains a Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867B) in which the applicant admitted under oath that she represented herself to be a citizen of the United States on January 2, 1999, by presenting a valid U.S. birth certificate that did not belong to her in order to gain admission into the United States.

By submitting a U.S. birth certificate to an immigration inspector when applying for admission to the United States, the applicant falsely represented herself to be a U.S. citizen. 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 attempted to use a United States birth certificate in order to gain admission into the United States as a U.S. citizen. Based on the above facts, the AAO finds that 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.