



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 17 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:

[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 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 December 19, 1999, applied for admission into the United States at the San Ysidro, California, Port of Entry. The applicant presented a U.S. Birth Certificate 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 December 19, 1999, he 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 the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. On March 9, 2002, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based upon the approved Form I-130. 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 in January 2000, but prior to September 16, 2002, the date on which he appeared at CIS' Los Angeles District Office. On September 5, 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 the applicant was removed to Mexico on September 6, 2003. The applicant now remains in Mexico. On September 20, 2004, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). He 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 re-enter the United States and reside with his U.S. citizen spouse.

The Director determined that the applicant was ineligible for admission to the United States because he had represented himself to be a U.S. citizen. The Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones. The Director denied the Form I-212 accordingly. *See Director's Decision* dated February 14, 2005.

On appeal, counsel disputes that the applicant is inadmissible for falsely representing himself to be a U.S. citizen and that the applicant's U.S. citizen wife and children are suffering extreme hardship. *See Form I-290B*, dated March 2, 2005.

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

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- (ii) Falsely claiming citizenship. –
 - a. 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.

b. 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.

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.*

The district director based the finding of inadmissibility under section 212(a)(6)(C)(ii) of the Act on the applicant's admitted use of a U.S. Birth Certificate belonging to another to attempt to enter the United States in 1999. Counsel contends that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act because there has never been a judicial determination that the applicant made a false claim to U.S. citizenship and it is an allegation, not a proven fact.

The AAO notes that counsel does not reference any regulations or legal precedent to support his contention that a judicial determination that the applicant has made a false claim to U.S. citizenship is required to find an applicant inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. The regulations do not indicate, and there is no known legal precedent that indicates, that a judicial determination that an applicant has falsely represented himself to be a U.S. citizen is required to find an applicant inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. The record reflects that, on December 19, 1999, the applicant was apprehended at the San Ysidro, Port of Entry, while presenting a U.S. Birth Certificate belonging to another to immigration officers in order to gain entry into the United States. The applicant has admitted in two sworn statements, taken on December 19, 1999 and September 16, 2002, that he falsely represented himself to be a U.S. citizen in order to gain entry into the United States in 1999. Furthermore, on December 19, 1999, the applicant was removed from the United States because he was inadmissible 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

presented the U.S. Birth Certificate belonging to another and that his parent's are citizens of Mexico. The AAO finds that the applicant is ineligible for the exception to the inadmissibility grounds for falsely representing 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. The Director and the AAO have found that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act and there is no waiver available for this ground of inadmissibility, 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.