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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: PORTLAND, OREGON

Date: **OCT 23 2006**

IN RE:

Applicant:

[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 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the District Director, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Iran who on May 16, 2005, at the Blaine, Washington, Port of Entry, orally represented herself to be a citizen of the United States, in order to gain admission into the United States. 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 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 the same date 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). In addition, the record reflects that previously, on June 2, 1997, an immigration judge ordered the applicant deported pursuant to section 241(a)(1)(D)(i) of the Immigration and Nationality Act (the Act). The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on April 23, 2002. On September 23, 2003, a petition for review of the BIA's order, filed with the United States Court of Appeals for the Ninth Circuit, was denied in part and dismissed in part. The applicant departed the United States on March 30, 2004, executing the immigration judge's deportation order. 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 U.S. citizen spouse.

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. In addition, the District Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The District Director then denied the Form I-212 accordingly. *See District Director's Decision* dated November 17, 2005.

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

On appeal, the applicant submits a letter, an affidavit from her spouse, evidence of debt, a copy of tax returns for the year 2004, and a copy of a prescription drug for the applicant. In their letters, neither the applicant nor her spouse dispute the fact that she orally represented herself to be a citizen of the United States in order to gain entry into the United States. They go on to describe the applicant's previous marriage to a U.S. citizen and the reasons why they decided to attempt to enter by falsely stating that she was a U.S. citizen. Finally, the applicant requests a second chance in order to reside with her husband in the United States.

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. As noted above, the record reflects and the applicant does not dispute, that on May 16, 2005, she made an oral representation of U.S. citizenship in order to gain admission into the United States. A false representation of U.S. citizenship may be either an oral representation or one supported by an authentic or fraudulent document. Therefore, 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. 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.