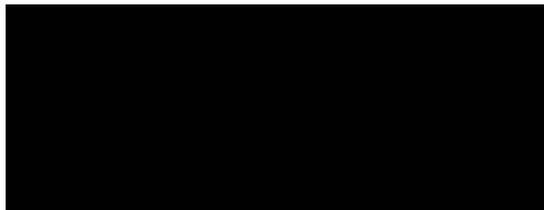


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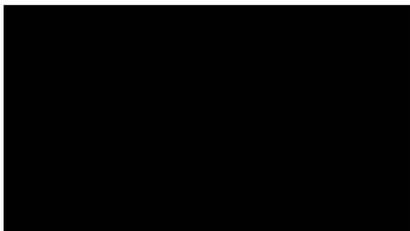
Applicant:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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, Seattle, Washington, 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 April 24, 1998, at the San Ysidro, California, Port of Entry, applied for admission into the United States. The applicant presented a valid Mexican passport containing a non-immigrant visa that did not belong to him. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by fraud and willful misrepresentation of a material fact. Consequently, on April 25, 1998, 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 February 27, 2001, at the Pacific Highway, Blaine, Washington, Port of Entry, the applicant represented himself to be a citizen of the United States in order to gain admission into the United States. The applicant was found to be inadmissible pursuant to 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. He was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act. The record reflects that the applicant illegally reentered the United States on February 28, 2001. The applicant was apprehended and a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was served on him pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5). Consequently, on March 1, 2001, the applicant was removed from the United States. On August 19, 2003, Citizenship and Immigration Services (CIS) encountered the applicant at the Yakima County jail, after he had been arrested for Driving Under the Influence (DUI). The applicant admitted entering the United States on April 1, 2001, 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 August 22, 2003, a Notice to Appear (NTA) for a removal hearing before an immigration judge was served on the applicant. On September 5, 2003, an immigration judge found the applicant removable pursuant to section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182 (a)(6)(A)(i), for having been present in the United States without being admitted or paroled, and granted him voluntary departure until January 3, 2004, in lieu of removal. The record reflects that the applicant departed the United States on December 31, 2003, prior to the expiration of his voluntary departure order and he continues to reside outside of the United States. 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). He now 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 his U.S. citizen spouse and children.

The District Director determined that the applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having reentered the United States without being admitted, after having been removed. 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 October 19, 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 the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has; (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others; (2) has added a bar to admissibility for aliens who are unlawfully present in the United States; (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal, counsel submits a brief, affidavits from the applicant, his spouse, and son, letters from family and friends regarding the applicant's good moral character, photographs of the applicant with family and friends, telephone records, proof of the applicant's spouse's trips to Canada, copies of the applicant's teaching certificates and a copy of his marriage certificate. In his brief, counsel states that he was never given the opportunity to submit additional evidence to obtain a favorable decision on the Form I-212. In addition, counsel asserts that the evidence submitted with the Form I-290B shows the continuing hardship the applicant's family confronts daily while the applicant remains outside of the United States. In her affidavit, the applicant's spouse alleges that the denial contains numerous mistakes. The applicant's spouse states that the applicant never represented himself as a citizen of the United States. According to her, he thought that the immigration officer was asking if he was living in the United States. In addition, she states that the applicant never admitted that he entered the United States on April 1, 2001 at San Ysidro, California, but rather that he entered in June 2001 through the Canadian/Washington border. Additionally, she states that the applicant departed the United States on December 31, 2003 and not December 1, 2003, as stated in the decision. The applicant's spouse further states that the applicant has been residing in Canada since April 1, 2005, and not in Mexico as stated by the District Director. She goes on to describe her visits to Mexico with the applicant and his family, and her visits to Canada. Furthermore, the applicant's spouse states that the applicant "has demonstrated his good character both professionally and personally through volunteerism and winning the hearts of my family members." Finally, she states that the applicant has family responsibilities in the United States and the family is experiencing profound hardship and pain from the separation. The applicant, in his affidavit, describes how he met his wife, his employment and volunteerism in the United States, and the errors made in the denial letter. Finally, the applicant apologizes for the choices he made and requests that he be given the opportunity to return to the United States to be reunited with his family.

The applicant's and his spouse's assertions are not persuasive. The record of proceeding contains a Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867A) in which the applicant admitted under oath that he claimed to be a U.S. citizen in order to "get across the border." He was asked twice what he had told officers and both times stated that he had told the officer he was a U.S. citizen. The Form I-867A indicates that his statement was read to him before he signed it and that his signature indicated that the statement is a full, true and correct record of his interrogation. In addition, the record contains another sworn statement in which the applicant indicated that he entered the United States on April 1, 2001, at San Ysidro, California. Additionally, neither the attorney, nor the applicant or his spouse, informed CIS that he had been residing in Canada since April 1, 2005. On his Form I-212, filed on July 22, 2005, the applicant declared his country of residence to be Mexico. The AAO agrees that the District Director erred in his decision by stating that the applicant departed the United States on December 1, 2003, instead of December 31, 2003. The AAO finds this to be a typographical error and harmless since it does not affect the outcome of the decision.

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. To recapitulate, the applicant was removed from the United States three times. The applicant reentered the United States shortly after each of his three removals without a lawful admission or parole and without permission to reapply for admission. Because the applicant illegally reentered the United States after his removals he is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act.

Section 212(a)(9)(C) of the Act states in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between---

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

- (A) removal;
- (B) departure from the United States;
- (C) reentry or reentries into the United States; or
- (D) attempted reentry into the United States.

An alien who is inadmissible under section 212(a)(9)(C)(i)(II) of the Act may not apply for consent to reapply unless more than ten years have elapsed since the date of the alien's last departure from the United States. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C)(i)(II) of the Act, it must be the case that the applicant's last departure was at least ten years ago *and* that CIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on December 31, 2003, less than ten years ago. The applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish eligibility for the benefit sought. The applicant in the instant case does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act. Thus, as a matter of law, the applicant is not eligible for approval of a Form I-212.

As noted above, on February 27, 2001, the applicant represented himself to be a citizen of the United States 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. In the present case, the applicant made an oral representation of U.S. citizenship in order to gain admission into the United States. The AAO finds that the applicant is clearly inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii).

Section 212(a)(6)(C) of the Act states 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 (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.