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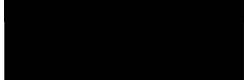


U.S. Citizenship
and Immigration
Services

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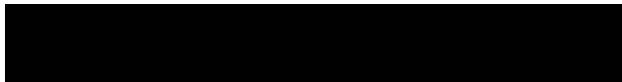
FILE:



Office: CALIFORNIA SERVICE CENTER

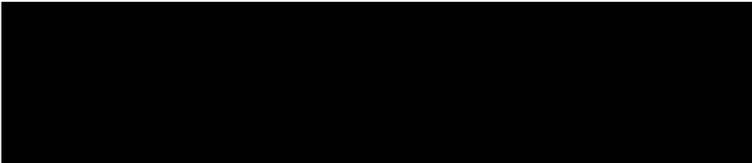
Date: **SEP 08 2006**

IN RE:



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 "James M. Wiemann", with the word "for" written below it.

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, in January 1990, entered the United States without inspection and continued to reside in the United States until he returned to Mexico to visit his ill mother in Mexico in January 1999. On January 23, 1999, the applicant applied for admission to the United States at the San Ysidro, California, Port of Entry. He made a false oral claim to U.S. citizenship. The applicant was found to be inadmissible pursuant to section 2129(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1181(a)(6)(C)(ii), for attempting to procure admission to the United States by making a false claim to U.S. citizenship. Consequently, on January 24, 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). On October 26, 2000, the applicant filed the Form I-212. 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, but prior to July 17, 2001, the date on which the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by his lawful permanent resident spouse. The applicant is inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A) 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 lawful permanent resident spouse, father and mother, and U.S. citizen children.

The director found the applicant inadmissible pursuant to sections 212(a)(6)(C)(ii), 212(a)(9)(A), 212(a)(9)(B) and 212(a)(9)(C) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(ii), 1182(a)(9)(A), 1182(a)(9)(B) and 1182(a)(9)(C). The director concluded that the applicant was inadmissible for making a false claim to U.S. citizenship for which there is no waiver available the applicant. The director also found 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 October 18, 2005.

On appeal, the applicant contends that his actions were based on a basic human need to visit his sick mother in Mexico and to provide for his family in the United States. *See Form I-290B and Affidavit*, dated November 10, 2005. The applicant also contends he is the sole financial provider for his family who would suffer financial hardships should his application be denied. In support of his contentions, the applicant submitted the above-referenced affidavit, financial documentation, a medical letter indicating his wife was pregnant and due to deliver in April 2006 and copies of documents already provided. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(6)(C)(ii) of the Act provides, 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 . . . is inadmissible.

II. 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.

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. Aliens making false claims to U.S. citizenship on or after September 30, 1996, are statutorily ineligible for a waiver of inadmissibility. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(ii) and 1182 (a)(6)(C)(iii). Therefore, if an alien makes a false claim to U.S. citizenship on or after September 30, 1996, the alien is subject to a *permanent* ground of inadmissibility. While the applicant indicated that he had a “basic human need” reason for making the false claim to U.S. citizenship, unfortunately such reasons do not mitigate or excuse inadmissibility pursuant to section 212(a)(6)(C)(ii) of the Act.

The record in the instant case reflects that the applicant attempted to enter the United States by orally making a false claim to U.S. citizenship. After being placed in secondary inspection, the applicant admitted that he was not a U.S. citizen and was removed from the United States and returned to Mexico. The record reflects that the applicant was not under the misconception that he was a U.S. citizen at the time he made the false claim to U.S. citizenship and that both of his parents were citizens of Mexico with only lawful permanent resident status in the United States. The AAO finds that the applicant is ineligible for the exception to the inadmissibility grounds for falsely representing that 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. 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.