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U.S. Citizenship
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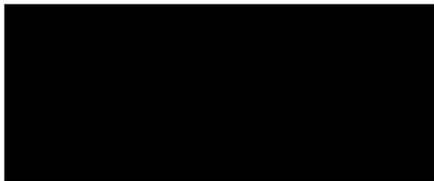


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 29 2007

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:



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 black ink, 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 Director, California Service Center 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 4, 2003, at the San Ysidro, California, Port of Entry, represented himself to be a citizen of the United States in order to gain admission into the United States. The applicant presented a U.S. birth certificate that did not belong to him. The applicant 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 himself 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, on January 5, 2003, 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). 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 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 child.

The Director determined that the applicant was inadmissible under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), as an alien who falsely represents himself to be a citizen of the United States for any purpose or benefit under the Act and not eligible for any exception or waiver. In addition the Director determined that the applicant was inadmissible under section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), for having been unlawfully present in the United States for a period of one year or more. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated February 22, 2006.

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 in which he states that the applicant qualifies to immigrate to the United States based on an approved Form I-130 filed by his U.S. citizen spouse. In addition, counsel states that the applicant followed the requirements by filing a Form I-212 for his unlawful presence and for having had a prior removal. Additionally, counsel states that the applicant presented evidence regarding hardship his family members would suffer if he is not permitted to reenter the United States. Counsel states that the Director referred to the specific documentation in general terms, and did not carefully review it and take it into consideration while adjudicating the Form I-212. Counsel cites section 212(a)(9)(B)(v) of the Act which relates to a waiver of inadmissibility for unlawful presence and states that the applicant filed such a waiver and awaits its approval. Furthermore, counsel states that the applicant's favorable factors include the fact that he is married to a U.S. citizen and has a U.S. citizen child, he followed the order of the Border Patrol agents by remaining in Mexico after his removal and, therefore, his respect for immigration law should carry a great deal of weight in balancing favorable and adverse factors. Counsel further states that the applicant has met the criteria for readmission, he has remained outside the United States, he is needed by his family, he is a great help to his spouse, both financially and emotionally, and he had been living in the United States for approximately six years. Counsel states that although the applicant presented a U.S. birth certificate, he timely retracted his claim to citizenship and immediately admitted that he was a national and citizen of Mexico. Counsel refers to the guidance set forth by the State Department in its 9 Foreign Affairs Manual (FAM) Sec. 40.63 Note 4.6, that indicates that a timely retraction would serve to purge a misrepresentation. Finally, counsel requests that the Form I-212 be granted.

The AAO notes that 9 FAM Sec. 40.63 Note 4.6, as cited by counsel, relates to misrepresentations under section 212(a)(6)(c)(i), not false claims to U.S. citizenship under section 212(a)(6)(c)(ii) of the Act, the section under which the applicant is inadmissible. The guidance relating to section 212(a)(6)(c)(ii) of the Act, found in 9 FAM Sec. 40.63 Note 11, makes no reference to timely retractions, only that a false claim to U.S. citizenship must have been properly categorized. In any event, the applicant did not retract his claim until he was asked to make a sworn statement in secondary inspection. This cannot be considered timely.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant can benefit from the application filed. To recapitulate, on January 4, 2003, 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 attempted to use a United States birth certificate that did not belong to him, in order to gain admission into the United States as a U.S. citizen. By submitting a U.S. birth certificate to an immigration inspector when applying for admission to the United States, the applicant falsely represented himself to be a U.S. citizen. Therefore, the applicant is clearly inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act.

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.