



U.S. Citizenship  
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

**MAR 12 2007**

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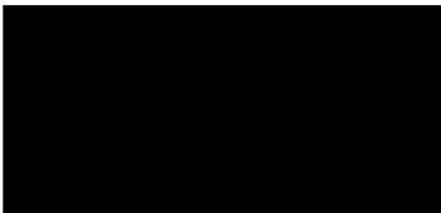
Applicant:



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 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 March 15, 1998, at the San Ysidro, California, 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 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 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 March 16, 1998, 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 record reflects that the applicant reentered the United States shortly after her removal, 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). The applicant is the beneficiary of a Petition for Alien Relative (Form I-130) filed by her Lawful Permanent Resident (LPR) spouse. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). She 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 her LPR spouse and U.S. citizen child.

The Director determined that the applicant was inadmissible under section 212(a)(6)(C)(ii) of the Act and not eligible for any exception or waiver and denied the Form I-212 accordingly. See *Director's Decision* dated April 7, 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 states that on September 9, 2004, the applicant filed a request for copies of her immigration file under the Freedom of Information Act (FOIA) and she has not received the copies up until the date she filed the instant appeal, on May 3, 2006. In addition, counsel states that the applicant denies the allegation that she claimed to be a U.S. citizen. Finally, on the Notice of Appeal to the AAO (Form I-290B), counsel states that he needs 180 days to submit a brief and/or evidence to the AAO.

On January 29, 2007, the AAO forwarded a fax to counsel informing her that this office had not received a brief or evidence related to this matter and unless counsel responded within five business days the appeal may be summarily dismissed. In response, counsel's office submits a letter and a declaration by the applicant. In the letter, counsel states that after analyzing the applicant's records he avers that Citizenship and Immigration Services is unable to affirmatively establish the applicant's ineligibility, inadmissibility, or deportability under any purported applicable section of the Act. Counsel further states that although the applicant admits to having been detained and inspected by immigration officers she denies that she ever made a false claim to U.S. citizenship or received an order of deportation and, therefore, the applicant is not in need of a Form I-212. In her declaration, the applicant states that on March 15, 1998, she presented a border-crossing card that did not belong to her in order to gain admission into the United States. She further states that she never claimed to be a U.S. citizen nor did she present a U.S. birth certificate.

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 she claimed to be a U.S. citizen in order to enter the United States. The Form I-867A indicates that her statement was read to her before she signed it and that her signature indicated that the statement is a full, true and correct record of her interrogation. In addition, the record contains a Form I-296, Notice to Alien Ordered Removed, also containing her signature that verifies she was removed on March 16, 1998. Counsel's assertions that the applicant never made a false claim to U.S. citizenship or received an order of deportation are not supported by the record.

To recapitulate, on March 15, 1998, the applicant represented herself 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. 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. There is no other waiver available for inadmissibility 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.