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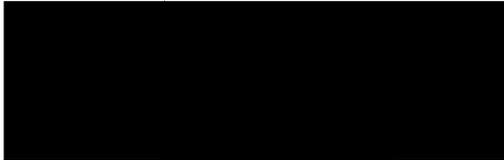
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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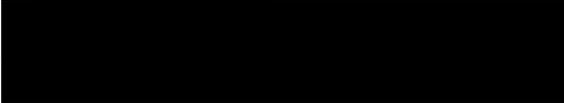
FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

OCT 19 2007

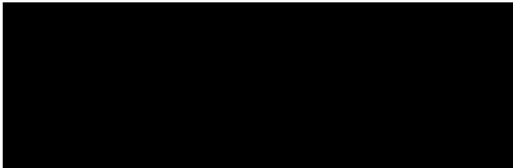
IN RE:



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.

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, on December 3, 1998, attempted to enter the United States at the San Ysidro, California Port of Entry by verbally stating that she was born in Anaheim, California. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(ii) and 212(a)(7)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § § 1182(a)(6)(C)(ii) and 1182(a)(7)(A)(i)(I), for falsely claiming to be a U.S. citizen and for being an immigrant without valid entry documents. On December 4, 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). On [REDACTED] the applicant married her spouse, [REDACTED]. On March 8, 2007, the applicant filed the Form I-212. On March 13, 2007, 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 [REDACTED]. On July 2, 2007, the applicant appeared at Citizenship and Immigration Services' (CIS) Fresno, California Field Office. The applicant testified that she had entered the United States by presenting a Mexican passport belonging to someone else in May 1999. The applicant also admitted that she had been removed from the United States for making a false claim to U.S. citizenship in 1998. 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 reside in the United States with her U.S. citizen spouse and children.

The director determined that no purpose would be served in adjudicating the application for permission to reapply for admission because the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), a ground of inadmissibility for which there is no waiver. The director denied the Form I-212 accordingly. See *Director's Decision* dated June 5, 2007.

On appeal, counsel contends that the district director erred in finding that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act because the claim was made only by a passive response to an immigration officer's leading question and was never affirmatively asserted. Counsel contends that the applicant's passive claim to U.S. citizenship was retracted when faced with the slightest questioning. Counsel contends that the applicant's family members would suffer extreme hardship if she were denied a waiver due to their medical conditions and that the applicant warrants a favorable exercise of discretion. See *Counsel's Brief*, dated July 10, 2007.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- (ii) Falsely claiming citizenship. –
 - a. 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.

b. 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.

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

In a separate proceeding, the AAO has found that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. The AAO has also found that the applicant is ineligible for the exception in section 212(a)(C)(ii)(b) of the Act and that no waiver is available. *See AAO's Decision Form I-601*, enclosed.

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. In that the applicant does not qualify for the exception and there is no waiver for this ground of inadmissibility, 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.