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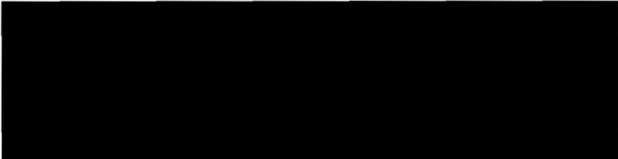
U.S. Department of Homeland Security  
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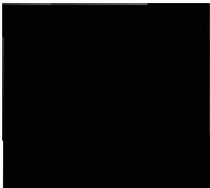


U.S. Citizenship  
and Immigration  
Services

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FILE:  Office: VERMONT SERVICE CENTER Date: APR 03 2008  
[consolidated therein]  
[consolidated therein]  
[relates]

IN RE: Applicant: 

APPLICATION: Application for Permission to Reapply for Admission into the United States after  
Deportation or Removal under Section 212(a)(9)(A) of the Immigration and  
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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 application for permission to reapply for admission after removal was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The Acting Director's decision will be withdrawn, and the matter will be remanded to him for further action.

The applicant is a native and citizen of Guatemala who initially entered the United States on June 12, 1981, without inspection. At some point, the applicant departed the United States and reentered on January 20, 1985. On February 12, 1985, the applicant was deported from the United States. In May 1987, the applicant departed the United States, and reentered in June 1987 without inspection. Based on the applicant's Application for Suspension of Deportation (Form EOIR-40), filed on July 19, 1996, the applicant departed the United States at some point, reentered in June 1988 without inspection, and again departed the United States in December 1990. On January 12, 1991, the applicant married [REDACTED], in Guatemala. Based on the applicant's Form EOIR-40, on January 31, 1991, the applicant reentered the United States without inspection. On October 8, 1991, applicant's son, [REDACTED] was born in Connecticut. On March 1, 1995, the applicant's twin daughters [REDACTED] and [REDACTED] were born in Connecticut. Based on a Mexican Migratory Form for Foreign Tourist, the applicant departed the United States on October 24, 1999. On October 26, 1999, the applicant attempted to enter the United States by falsely claiming United States citizenship. On the same day, the applicant was expeditiously removed from the United States. At some point, the applicant reentered the United States without inspection.

On February 18, 2003, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On February 28, 2003, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), based on the LIFE Act. On May 22, 2003, the Acting Director, Missouri Service Center, denied the applicant's Form I-485 based on the applicant's false claim to United States citizenship. On December 8, 2003, the Acting Director, Vermont Service Center, determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming United States citizenship, and there is no waiver of inadmissibility available to the applicant. *Acting Director's Decision*, dated December 8, 2003. The Acting Director denied the applicant's Form I-212 accordingly. *Id.* On January 8, 2004, the applicant filed an appeal of the Acting Director's Decision. *Form I-290B*, filed January 8, 2004. On December 23, 2004, the AAO withdrew the Acting Director's decision and remanded the case back to the Acting Director. *See AAO Decision*, dated December 23, 2004. The AAO determined that the applicant was "not inadmissible under section [2]41(a)(5) of the Act, [and] he is eligible to file waivers of grounds of excludability due to his inadmissibility under sections 212(a)(9)(A)(i) and 212(a)(6)(C)(ii) of the Act," when considering the LIFE Act under section 1104(g). *Id.* On September 23, 2005, the Director reopened the applicant's Form I-212 and requested additional evidence from the applicant. On January 24, 2006, the Acting Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for being ordered removed under section 235(b)(1), for reentering the United States within 5 years of the date of such removal without authorization, and that the unfavorable factors in the applicant's case outweighed the favorable factors. The Acting Director denied the applicant's Form I-212 accordingly. *Acting Director's Decision*, dated January 24, 2006.

The applicant is inadmissible to the United States under sections 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), and 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii). He now seeks permission to reapply for admission into the United States, in order to reside with his Guatemalan wife and United States citizen children.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 5 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.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

Section 212(a)(6). Illegal entrants and immigration violators.-

(C) Misrepresentation.-

(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.

8 C.F.R. § 245a.18 states in pertinent part:

- (c) Waiver of grounds of inadmissibility. Except as provided in paragraph (c)(2) of this section, the Service may waive any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to ensure family unity, or when the granting of such a waiver is otherwise in the public interest. If available, an applicant may apply for an individual waiver as provided in paragraph (c)(1) of this section without regard to section 241(a)(5) of the Act.
  - (1) Special rule for waiver of inadmissibility grounds for LIFE Legalization applicants under sections 212(a)(9)(A) and 212(a)(9)(C) of the Act. An applicant for adjustment of status under LIFE Legalization who is inadmissible under section 212(a)(9)(A) or 212(a)(9)(C) of the Act, may apply for a waiver of these grounds of inadmissibility while present in the United States, without regard to the normal requirement that a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, be filed prior to embarking or re-embarking for travel to the United States, and without regard to the length of time since the alien's removal or deportation from the United States. Such an alien shall file Form I-690, Application for Waiver of Grounds of Excludability Under Sections 245A or 210 of the Immigration and Nationality Act, with the district director having jurisdiction over the applicant's case if the application for adjustment of status is pending at a local office, or with the Director of the Missouri Service Center. Approval of a waiver of inadmissibility under section 212(a)(9)(A) or section 212(a)(9)(C) of the Act does not cure a break in continuous residence resulting from a departure from the United States at any time during the period from January 1, 1982, and May 4, 1988, if the alien was subject to a final exclusion or deportation order at the time of the departure.
  - (2) Grounds of inadmissibility that may not be waived. Notwithstanding any other provisions of the Act, the following provisions of section 212(a) of the Act may not be waived by the [Secretary, Department of Homeland Security] under paragraph (c) of this section:
    - (i) Section 212(a)(2)(A)(i)(I) (crimes involving moral turpitude);

- (ii) Section 212(a)(2)(A)(i)(II) (controlled substance, except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana);
- (iii) Section 212(a)(2)(B) (multiple criminal convictions);
- (iv) Section 212(a)(2)(C) (controlled substance traffickers);
- (v) Section 212(a)(3) (security and related grounds); and
- (vi) Section 212(d)(4) (public charge)

....

The AAO notes that on February 28, 2003, the applicant filed a Form I-485 based on the LIFE Act; therefore, the applicant's grounds of inadmissibility should be adjudicated based on the laws and regulations governing the LIFE Act. Pursuant to 8 C.F.R. § 245a.18(c)(1), all waivers must be filed on a Form I-690, not a Form I-212. Additionally, under 8 C.F.R. § 245a.18(c)(2), neither section 212(a)(9)(A)(i) of the Act or section 212(a)(6)(C)(ii) of the Act, are listed as grounds of inadmissibility that cannot be waived by a Form I-690. The AAO finds that since the applicant filed a Form I-485 based on the LIFE Act, he is eligible to file a Form I-690 to waive his grounds of inadmissibility under sections 212(a)(9)(A)(i) and 212(a)(6)(C)(ii) of the Act. Therefore, the Acting Director's decision will be withdrawn and the record will be remanded to her in order to allow the applicant to file a Form I-690, which the Acting Director will then adjudicate under 8 C.F.R. § 245a.18(c) and the provisions of the LIFE Act.

**ORDER:** The Acting Director's decision is withdrawn. The matter is remanded to her for further action consistent with the foregoing discussion.