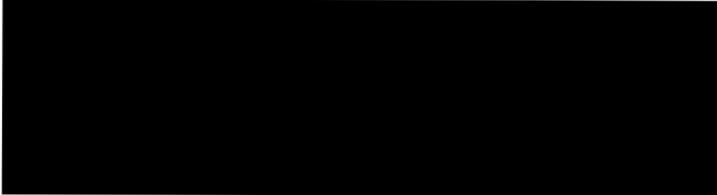


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FILE:



Office: VERMONT SERVICE CENTER
[consolidated therein]

Date: APR 10 2008

IN RE:

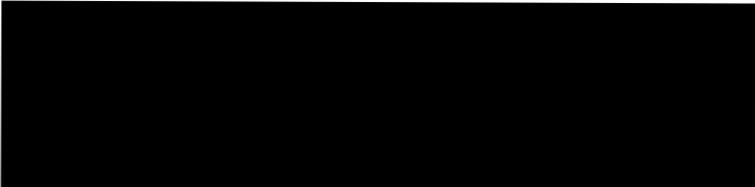
Applicant:



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:



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 appeal will be dismissed.

The applicant is a native and citizen of Mexico who attempted to enter the United States by falsely claiming United States citizenship on June 22, 1998.¹ On July 23, 1998, the applicant was expeditiously removed to Mexico. On December 22, 2000, the applicant entered the United States on a B-2 nonimmigrant visa, with authorization to remain in the United States until June 21, 2001. On February 3, 2001, the applicant married a United States citizen in New York. On June 20, 2001, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On November 6, 2001, the applicant's Form I-130 was approved. On February 8, 2002, the applicant's Form I-485 was denied. On the same day, a Notice to Appear (NTA) was issued for the applicant. Additionally, on the same day, the applicant was convicted of illegal re-entry after deportation, in the United States District Court, Northern District of New York, and was sentenced to five (5) years probation. On February 27, 2002, an immigration judge ordered the applicant removed from the United States, and a Warrant of Removal/Deportation (Form I-205) was issued against the applicant. On March 5, 2002, the applicant was removed from the United States. On December 29, 2004, the applicant's current wife, [REDACTED], filed a second Form I-130 on behalf of the applicant. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), 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 United States citizen wife and child.

The Acting Director determined that the applicant is statutorily "inadmissible to the United States pursuant to Section 212(a)(6)(C)(ii) of the Act [8 U.S.C. § 1182(a)(6)(C)(ii)] for making a false claim of the United States citizenship, and no waiver of that statute is available to [him]." *Acting Director's Decision*, dated December 1, 2005. The Acting Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Id.*

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

(A) Certain alien previously removed.-

. . . .

(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

¹ The applicant presented himself at the San Ysidro Port of Entry, California, as [REDACTED]

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.-

(i) In general.- 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.-

(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.

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

The AAO notes that aliens making false claims to United States citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. As the applicant's false claim to United States citizenship occurred after September 30, 1996, the applicant is clearly inadmissible to the United States and not eligible for a waiver under section 212(a)(6)(C)(iii) of the Act, and there is no waiver of inadmissibility under that ground. Additionally, the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act for being ordered removed.

On appeal, the applicant, through counsel, asserts that the Acting Director "incorrectly concluded that the alien had claimed to be a United States citizen. The alien never made any such claims.... The alien was never made aware ... that he was being removed for making a false claim to citizenship. He could not speak English, and the proceedings were conducted entirely in English. Therefore, it is improper to find that the alien claimed to be a citizen." *Form I-290B*, filed January 6, 2006. The AAO notes that the photo of [REDACTED] matches the applicant's passport photo and the applicant's handwriting matches the signature of [REDACTED]. Additionally, on December 17, 2001, the applicant admitted to an

immigration officer in the Albany, New York, Sub-Office, that he was deported on July 23, 1998. The AAO notes that in the applicant's sworn statement, which was conducted in Spanish, at the San Ysidro Port of Entry, California, on July 23, 1998, the applicant stated he was a citizen of Mexico, and when he attempted to enter the United States, he said "[he] was a 'U.S. citizen'." *Sworn Statement*, dated July 23, 1998. Additionally, the AAO notes that the applicant initialed each page of the Sworn Statement, acknowledging that his answers were true and correct. Counsel claims that the Acting Director "relied on an earlier order of removal, issued against the applicant in 1998. The applicant was never notified about the existence of [the removal] order until the denial of [the Form I-212]." *Appeal Brief*, filed January 23, 2006. The AAO notes that the applicant was served with the Notice and Order of Expedited Removal (Form I-860) on July 23, 1998. Additionally, the applicant received the Notice to Alien Ordered Removed/Departure Verification (Form I-296), dated July 23, 1998, as evidenced by his signature, which states that the applicant was ordered removed and barred from reentering the United States for five (5) years from the date of departure from the United States.

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. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the Acting Director.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.