



U.S. Citizenship
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FILE: [redacted] Office: CHICAGO, ILLINOIS Date: APR 29 2008
[consolidated therein]

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) 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.

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 after removal was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The record reflects that the applicant is a native and citizen of Mexico who initially entered the United States in 1976 without inspection. At some point, the applicant departed the United States. On January 10, 1986, the applicant's brother, [REDACTED] became a United States citizen. On April 8, 1987, the applicant attempted to reenter the United States by presenting a Texas birth certificate and claiming to be a United States citizen. On April 16, 1987, an immigration judge ordered the applicant excluded and deported. On the same day, the applicant was deported from the United States. On an unknown date, but before November 5, 1990, the date the applicant filed a divorce action from his wife in Cook County, Illinois, the applicant reentered the United States without inspection. On February 22, 1991, the applicant's United States citizen brother, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On March 6, 1991, the applicant's Form I-130 was approved. On May 4, 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On October 24, 2006, the District Director denied the applicant's Form I-485 and Form I-212, finding the applicant inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), for being deported from the United States and reentering without inspection, and section 212(a)(6)(C) of the Act, for misrepresenting himself in order to gain an immigration benefit. The District Director determined that the applicant was not "eligible for a [section 212(i)] waiver." *District Director's Decision*, dated October 24, 2006. The AAO finds that the applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for his removal from the United States. He now 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 with his lawful permanent resident parents.

Sections 212(a)(6)(C)(i), (ii), and (iii) of the Act provides, in pertinent part, that:

(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).

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

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 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)(9)(C). Aliens unlawfully present after previous immigration violations.-

- (i) In general.- Any alien who-

- (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's embarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

The AAO finds that the District Director improperly determined that the applicant is ineligible under section 212(a)(9)(C)(i)(II) of the Act. An Office of Programs Memorandum titled, Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Act, states that section 212(a)(9)(C)(i)(II) "applies to those aliens ordered removed before or after April 1, 1997, and who enter or attempt to reenter the United States unlawfully any time on or after April 1, 1997. The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997." See *Memorandum by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Programs, dated March 31, 1997*. The AAO notes that the applicant's illegal reentry in 1990 does not make him inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and therefore, he is not subject to the provisions of section 212(a)(9)(C) of the Act.

Additionally, the AAO finds that the District Director improperly determined that the applicant is ineligible for a waiver of his section 212(a)(6)(C) ground of inadmissibility. 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. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to United States citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

As the applicant's false claim to United States citizenship occurred prior to September 30, 1996, he is inadmissible under section 212(a)(6)(C)(i) of the Act, and eligible for a waiver. However, the AAO finds that the applicant is subject to the provisions of section 212(a)(9)(A) of the Act, because of his April 16, 1987 deportation from the United States.

On appeal, the applicant claims that his parents would suffer extreme hardship if he were removed from the United States. See *attachment to Form I-290B*, filed November 28, 2006. The applicant states that "[d]ue to the advance age of [his] parents, they suffer several illnesses and they are required to take several medicines, several times a day. [He] attend[s] to [his] parents with medical visits, administration of medicine, shopping, cooking, cleaning and personal hygiene for each one of them. If [he] were not present, [his] parents would not have anybody to take care of them...[His] parents depend totally on [him] for everything." *Id.* The AAO notes that the applicant's parents reside with him. See *Referral Order, CCBHS, Ambulatory and Community Health Network, Community Access Program*, dated August 22, 2005. The applicant's mother has a "history of bilateral hand numbness, pain, and weakness...Past medical history is notable for a 19-year history of diabetes mellitus for which she takes insulin. She also has hypertension and elevated cholesterol." *Final Report from [REDACTED]* dated November 22, 2005. The AAO notes that when the applicant's mother attended her appointment with [REDACTED], the applicant was present to help as a Spanish interpreter. *Id.* The applicant's states that even though he has a sister and two brothers who reside in the United States, they have their own families to care for. See *attachment to Form I-290B, supra*. The AAO notes that unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant's parents, but it will be just one of the determining factors.

The record of proceedings reveals that on April 16, 1987, an immigration judge ordered the applicant excluded and deported from the United States. On the same day, the applicant was deported from the United States. In 1990, the applicant reentered the United States without inspection. Based on the applicant's previous order of deportation, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an

advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work unlawfully. *Id.*

The favorable factors in this matter are the applicant's family ties to lawful permanent residents of the United States, his parents, general hardship they may experience, no criminal record, a history of paying taxes, and the approval of a petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's entries without inspection, misrepresentation of his identity and periods of unauthorized presence and employment.

While the applicant's actions cannot be condoned, the AAO finds that given all the circumstances of the present case, particularly the length of time since his removal and reentry, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.