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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: LONDON, ENGLAND Date: **AUG 06 2008**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

[REDACTED]

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 Officer-in-Charge (OIC), London, England, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant, Mr. Allen Hormozi, is a native of Iran and a citizen of Norway who was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which the OIC denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the OIC, dated December 6, 2006.* The applicant submitted a timely appeal.

On appeal, counsel states that the applicant established extreme hardship to his spouse and parents if the waiver application were denied. Additional documents were submitted on appeal.

The record establishes the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), which provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.¹ For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.² The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists). A waiver for unlawful presence is under section 212(a)(9)(B) of the Act.

The record reflects that the applicant entered the United States under the Visa Waiver Program on April 24, 1996 and was authorized to remain until July 23, 1996. He remained in the country until his removal on April 16, 2003. For purposes of calculating unlawful presence under section 212(a)(9)(B) of the Act, the applicant began to accrue time in unlawful presence from April 1, 1997 until April 16, 2003; he therefore accrued more than six years of unlawful presence. When the applicant was removed from the United States he triggered the

¹ Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

² *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

ten-year-bar. Consequently, the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II), is correct.

The applicant is inadmissible for unlawful presence. However, *de novo* review of the record establishes that the applicant is also inadmissible under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for having attempted to procure admission to the United States by fraud or willful misrepresentation by claiming to be a citizen of the United States. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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. –

(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 . . . is inadmissible.

....

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

The record shows that on January 31, 2003, the applicant and [REDACTED] were passengers in a vehicle seeking admission into the United States at the I-15 checkpoint in Temecula, California. In response to the border patrol's request to state where they was born, the applicant and [REDACTED] both stated "Iran." The border patrol officer then asked both passengers whether they were citizens of the United States, to which the applicant and [REDACTED] stated "Yes." The applicant and [REDACTED] were referred to secondary inspection, where they were again asked about their citizenship. They stated they were born in Iran. When asked if they had immigration documents allowing them to be in and remain in the United States [REDACTED] stated that he was a citizen of the United States by naturalization. The applicant replied that he did not have his documents with him. During questioning the applicant admitted that he had overstayed his last admission period and was attempting to apply for a change of status/employment authorization. He stated that he was a citizen of Norway and that he was in the United States illegally. The

applicant was then held in custody pending removal. *Record of Deportable/Inadmissible Alien, dated January 31, 2003.*

The AAO notes that aliens making false claims to U.S. 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.

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 *Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service,* dated April 8, 1998 at 3.

Because the applicant's claim to U.S. citizenship occurred after September 30, 1996, he is ineligible to apply for a Form I-601 waiver. Although a waiver is available for unlawful presence, even if the applicant were to establish that the waiver should be granted, he is still inadmissible under section 212(a)(6)(C)(ii) of the Act, for which he is ineligible to apply for a waiver. Consequently, the AAO will not consider in this decision whether the grant of a waiver under section 212(a)(9)(B) of the Act for unlawful presence is warranted as the applicant is rendered inadmissible under section 212(a)(6)(C)(ii) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.