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U.S. Citizenship
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Services

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[Redacted]

H4

FILE:

[Redacted]

Office: SAN DIEGO, CALIFORNIA

Date:

FEB 21 2008

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:

[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.

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, San Diego, California, 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 8, 1997. On June 11, 1997, the applicant was expeditiously removed to Mexico. In July 1997, the applicant entered the United States without inspection. 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), 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), and 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii). She now seeks permission to reapply for admission into the United States, in order to reside with her United States citizen husband and three United States children.

The District Director 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. The District Director stated "Section 244 of IIRIRA did not create any waivers for immigrants found inadmissible under section 212(a)(6)(C)(ii) of the Act. Therefore, immigrants found inadmissible under section 212(a)(6)(C)(ii) of the Act are permanently inadmissible." *District Director's Decision*, dated June 27, 2007. The District Director found that "[d]ue to [the applicant's] oral false claim to U.S. citizenship on June 8, 1997, which was a violation under Section 212(a)(6)(C)(ii) of the INA, [the applicant is] found inadmissible, without any special rules or waivers considered." *Id.* The District 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.-

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(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.-

(A) Aliens present without admission or parole.-

(i) In general.- An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General [now, Secretary, Department of Homeland Security], is inadmissible.

(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.

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)(ii) of the Act. Additionally, the applicant is inadmissible under section 212(a)(6)(A)(i) of the Act for being present without admission or parole.

On appeal, the applicant, through counsel, asserts that the District Director is "incorrect. Applicant did not make any false claim to U.S. citizenship on the day alleged by the Service or at any other time. The Service offers no evidence to support its contention that the applicant falsely claimed U.S. citizenship." *Form I-290B*, filed July 25, 2007. The AAO notes that in the applicant's sworn statement, taken at the San Ysidro Port of Entry, California, on June 9, 1997, the applicant stated she was a citizen of Mexico, and she attempted to enter the United States "[t]hrough the line and saying U.S. citizen." Additionally, counsel states that in response to a question by Border Patrol regarding where the applicant was born, the applicant stated she was born "[h]ere, in San Diego." *Appeal Brief*, page 3, filed July 26, 2007. Counsel relies on various Ninth Circuit Court of Appeals (Ninth Circuit) cases, stating that since the applicant did not make a "direct representation of U.S. citizenship," or has been convicted of violating 8 U.S.C. § 911, that the applicant is not inadmissible under section 212(a)(6)(C)(ii) of the Act. *Id.* However, evidence in the record establishes that the applicant made a direct claim to United States citizenship when she went "[t]hrough the line [and stated] U.S. citizen." Counsel claims that the applicant "recanted her statement." *Id.* at 5. However, the AAO notes that she initially attempted to enter the United States by claiming United States citizenship, and her later recantation of United States citizenship during secondary inspection is irrelevant. Counsel claims that the applicant "presents substantial equities in her favor." *Form I-290B, supra.* Counsel states the

applicant “has continuously resided in the United States since her first entry in 1994...[the applicant] is married to a U.S. citizen with whom she shares three U.S. citizen children. [The applicant] and her husband are currently expecting their fourth child.... [The applicant] is a dedicated homemaker who provides a loving, stable environment for her husband and children. If [the applicant] is not admitted into the U.S., her family will suffer extreme hardship in her absence as they rely on her to provide for them as a wife and mother.... [The applicant] has never been charged with or convicted of any criminal offense.... [The applicant] is a person of good moral character.” *Appeal Brief, supra* at 14.

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 District Director.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she 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.