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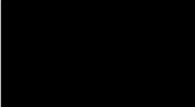
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date FEB 21 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:

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 Director, California 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 initially entered the United States on December 6, 1989 without inspection, according to his Application to Register Permanent Resident or Adjust Status (Form I-485). Based on the applicant's Petition for Alien Relative (Form I-130), the applicant reentered the United States on June 7, 1990. On October 13, 1992, the applicant's father filed a Form I-130 on behalf of the applicant. On December 27, 1992, the applicant's Form I-130 was approved. On February 27, 1998, the applicant attempted to enter the United States by falsely claiming United States citizenship. On February 28, 1998, the applicant was expeditiously removed to Mexico. At some point, the applicant reentered the United States. On March 5, 1999, the applicant's son, [REDACTED], was born in California. On June 29, 2002, the applicant was arrested for inflicting corporal injury upon his spouse/cohabitant. On January 30, 2004, the applicant's father became a United States citizen. On February 5, 2004, the applicant married [REDACTED], a lawful permanent resident of the United States, in California. On March 3, 2004, the applicant filed a Form I-485. On April 15, 2004, the applicant filed an Application for Waiver of Ground of Excludability (Form I-601). On November 4, 2004, the applicant's Form I-485 was denied. On December 7, 2006, the applicant's Form I-601 was denied. The applicant is inadmissible to the United States under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), and section 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 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 wife and United States citizen son.

The 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 Director determined that "[b]ecause of [the applicant's] verbal claim to United States Citizenship in 1998 to gain entry into the United States, [the applicant is] inadmissible with no waiver available to overcome this ground of inadmissibility." *Director's Decision*, dated December 26, 2006. The 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.-

(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.

The AAO notes that aliens making a false claim 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)(9)(A)(i) of the Act for being ordered removed.

On appeal, the applicant's wife states that if the applicant is removed from the United States she "would suffer dearly...not only emotionally but also financially.... If [the applicant] would have to leave the U.S. and live in Mexico, it would be extremely hard financially on [her]. [She] would not be able to offer a good life for [her] husband, if he had to live in another country, [she] cannot maintain two homes.... If [they] relocated to Mexico where [they] have no family, friends or resources, the devastation would be just as great if not greater. Do [sic] to the financially [sic] situation [her] husband and son would be exposed to, inferior nutritional, home and health care resources and in all likelihood a lower standard of living." *Statement from* [REDACTED], dated January 15, 2007. The AAO notes that in an attempt to enter the United States on December 27, 1998, the applicant stated to an inspector that he was born in Van Nuys, California. During the applicant's December 28, 1998 interview with an immigration officer, he admitted to knowing that it was

against the law of the United States to claim to be a United States citizen. *Sworn Statement by the applicant*, dated December 28, 1998.

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 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.