

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

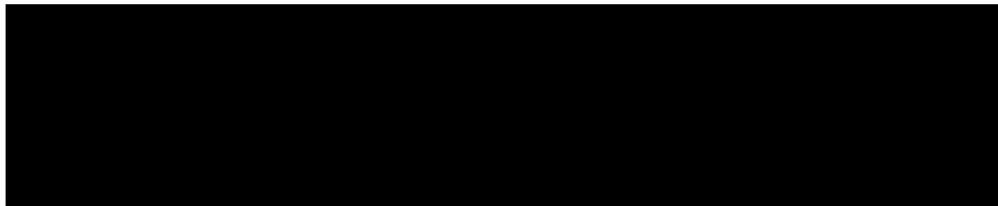
U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W., Rm. 3000
Washington, DC 20529



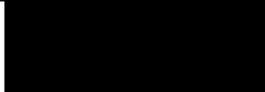
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H4



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.

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 attempted to enter the United States on December 14, 1996, by falsely claiming United States citizenship. On December 17, 1996, the applicant was removed to Mexico. In February 1998, the applicant reentered the United States without inspection. On November 27, 1999, the applicant married [REDACTED] a lawful permanent resident of the United States, in California. On February 26, 2001, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On May 20, 2006, the applicant's daughter, [REDACTED] was born in California. On June 16, 2006, the applicant's wife became a United States citizen. On July 17, 2006, the applicant's Form I-130 was approved. 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). He now seeks permission to reapply for admission into the United States, in order to reside with his naturalized United States citizen wife and United States citizen daughter.

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 because of the applicant's oral false claim to United States citizenship, he is inadmissible and there is no waiver available. *Director's Decision*, dated January 25, 2007. 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.-

(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 and section 212(a)(9)(A)(ii) of the Act, for being present without admission or parole and for being ordered removed.

On appeal, the applicant states "[he] know[s] [he] did wrong when [he] falsely [represented] [him]self as a U.S. Citizen...now [he] understand[s] how bad [his] action was." *Form I-290B*, filed February 23, 2007. The AAO notes that the applicant presented a California birth certificate in someone else's name in order to gain entry into the United States. During secondary inspection, the applicant admitted to his true name and citizenship. *Record of Excludable Alien* (Form I-213), dated December 14, 1996. The applicant states "[f]or many years [he has] been living in the United States and [has] tried to abide [by] every law, now [he is] married and [has] a daughter who is 9 months old, they are the reason for [his] life." *Form I-290B, supra*. The applicant's wife states that "[she] know[s] that [the applicant's] actions were wrong but even though he is a good person, as a husband, as a father of [her] daughter and as a human being he does not harm anybody, he is also a hard worker." *Statement from* [redacted], dated February 6, 2007.

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.