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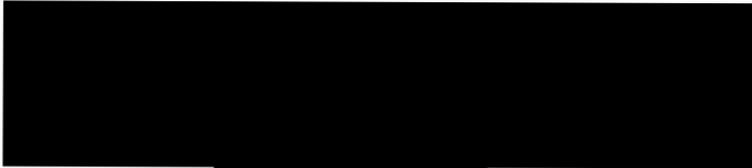
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 14 2008**

IN RE: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:



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 Director, California Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it 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, on April 30, 1998, attempted to enter the United States at the San Ysidro, California Port of Entry by verbally stating that he was a U.S. citizen born in Los Angeles, California. The applicant was then referred to secondary inspection. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming to be a U.S. citizen. On the same day, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1), under the name [REDACTED].” On April 26, 2006, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and 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 “come to the United States and fulfill my goals of a better life and education.” If the applicant, as he states in an attachment to the Form I-212, has remained in Mexico since his April 30, 1998 removal, he is no longer inadmissible to the United States under section 212(a)(9)(A)(i) of the Act. The applicant’s statement, however, is insufficient proof of his residence in Mexico during the claimed period. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The director determined that the applicant was mandatorily inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act and no purpose would be served in adjudicating the Form I-212. The director denied the Form I-212 accordingly. *See Director’s Decision* dated March 13, 2007.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. *See Counsel’s Brief*, dated April 2, 2007. In support of his contentions, submits only the referenced brief. The entire record was reviewed in rendering a decision in this case.

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.

ii. Exception-

In the case of an alien making a representation described in subclause (I), if each natural parents of the alien . . . is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

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

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. As of September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208, aliens making false claims to U.S. citizenship are statutorily ineligible for a waiver of inadmissibility. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(ii) and 1182 (a)(6)(C)(iii). Therefore, if an alien makes a false claim to U.S. citizenship on or after September 30, 1996, the alien is subject to a permanent ground of inadmissibility.

On March 29, 2000, the applicant was expeditiously removed from the United States. The corresponding determination of inadmissibility (Form I-860) indicates that the applicant made an oral false claim to U.S. citizenship and was deemed inadmissible for making a false claim to U.S. citizenship. The Record of Sworn Statement in Proceedings (Form I-867B) indicates that, after being placed in secondary inspection, the applicant admitted that he was not a U.S. citizen and that he did not have documentation to enter the United States. The applicant also admitted that it was his intention to enter the United States in order to reside and work there. The record reflects that the applicant was not under the misconception that he was a U.S. citizen at the time he made the false claim to U.S. citizenship and that both of his parents were citizens of Mexico.

On appeal, counsel contends that the applicant made a timely retraction of his false claim to U.S. citizenship because the applicant effectively retracted his erroneous statement concerning his citizenship as soon as he realized that he had made an incorrect statement. Counsel asserts that the applicant did not understand the questions, became a little nervous and told the immigration officer that he was a U.S. citizen. Counsel asserts that the applicant then admitted his true identity and nationality when he understood the questions being posed to him.

Counsel contends that, as dictated by the Ninth Circuit Court of Appeals' (Ninth Circuit) unpublished decision in *Olea-Reyes v. Gonzalez*, No. [REDACTED], the applicant's withdrawal of his false statement was made without coercion, delay and can be considered an inseparable incident out of which an intent to deceive cannot be drawn. The AAO notes that unpublished legal decision are not precedent and are not legally binding. However, the applicant's case is also distinguishable from *Olea-Reyes v. Gonzalez*. The AAO does not find the circumstances that led the Ninth Circuit to conclude that [REDACTED] had made a timely retraction of his false claim to citizenship to be present in this matter. Unlike [REDACTED] the applicant has not provided clear and consistent testimony to establish that he made a timely retraction of the false claim to U.S. citizenship. Unlike [REDACTED], the applicant did not retract his claim to U.S. citizenship until he was placed into secondary inspections. Unlike [REDACTED], the applicant did not have a pending application, petition or employment

authorization card that could cause him to be under the misconception that he was entitled to otherwise enter the United States. Unlike ██████, the applicant provided a false name to the immigration officers who questioned him and did not admit to his true identity at any point during his inspection. He was removed from the United States under this false identity. Accordingly, counsel's contention that the reasoning in *Olea-Reyes v. Gonzalez* should be applied in the present matter is not persuasive. The circumstances considered by the Ninth Circuit in reaching its conclusion that ██████'s false claim to citizenship was the result of confusion do not apply here. The applicant's use of a false identity throughout the inspection process not only distinguishes his situation from that of ██████, but undermines any contention that his claim to U.S. citizenship was the result of confusion, rather than an intention to deceive.

The Department of State Foreign Affairs Manual (FAM) offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act. Stated in part; (1) a misrepresentation can be made orally or in writing, (2) silence or the failure to volunteer information does not in itself constitute a misrepresentation, (3) the misrepresentation must have been practiced on an official of the U.S. government, generally a consular or immigration officer, (4) a timely retraction will avoid the penalty of the statute. Whether a retraction is timely depends on the circumstances of the particular case.

A timely retraction has been found in cases where applicants used fraudulent documents only *en route* and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. *See, e.g., Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel*, 18 I&N 33 (BIA 1984). In the instant case, the applicant retracted his claim to U.S. citizenship only after having been placed into secondary inspection by immigration officials. Based on the record, the AAO finds that the applicant did not offer a timely retraction of his claim to U.S. citizenship. The AAO finds that the applicant, by making an oral false claim to U.S. citizenship in 1998, is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act for attempting to enter the United States by making a false claim to U.S. citizenship. The AAO also finds that the applicant is ineligible for the exception to the inadmissibility grounds under section 212(a)(6)(C)(ii)(II) of the Act.

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 inadmissible under the provisions of section 212(a)(6)(C)(ii) of the Act and no waiver is available. 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 appeal will be dismissed.

ORDER: The appeal is dismissed.