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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: COLUMBUS, OHIO

Date:

NOV 03 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:



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 Field Office Director, Columbus, Ohio, denied the denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). The matter 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 October 7, 1999. On October 8, 1999, the applicant was expeditiously removed to Mexico. On an unknown date, the applicant reentered the United States without inspection. On February 10, 2000, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On September 14, 2000, the applicant's Form I-130 was approved. On February 7, 2002, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On November 6, 2007, the Field Office Director denied the applicant's Form I-485. 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, in order to reside with his United States citizen wife and son.

The Field Office Director determined that the "adverse factors prevail over any favorable factors," and denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Decision of the Field Office Director*, dated November 6, 2007.

On appeal, the applicant, through counsel, asserts that the "Service erred in not finding the applicant's departure results in extreme hardship and that the positive factors outweigh the adverse factors and therefore, applicant's [Form I-485] pursuant to section 245 of [the Act] should be granted. Additionally, the Service failed to consider all of the facts in support of [the applicant's] application." *Form I-290B*, filed December 11, 2007.

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.

....

(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.

The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, for being ordered removed under section 235(b)(1) of the Act.

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 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. On October 7, 1999, the applicant presented a social security card and a Texas birth registration card in someone else's name in order to gain entry into the United States. Copies of those documents are in the record. During secondary inspection, the applicant admitted to his true nationality.¹ *Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated October 7, 1999. As the applicant's false claim to United States citizenship occurred after September 30, 1996, the applicant is inadmissible to the United States and not eligible for a waiver under section 212(a)(6)(C)(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 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 Field Office 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.

¹ The AAO notes that the applicant stated his true name was [REDACTED]



ORDER: The appeal is dismissed.