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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

[REDACTED]

FILE:

Office: LOS ANGELES, CALIFORNIA Date: SEP 11 2008  
[consolidated therein]

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the District Director, Los Angeles, 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 July 28, 1997. On the same day, the applicant was expeditiously removed to Mexico. On July 30, 1997, the applicant attempted to enter the United States by presenting a Resident Alien (Form I-551) card in someone else's name. On August 1, 1997, an immigration judge ordered the applicant removed from the United States, and on the same day, the applicant was removed to Mexico. On October 14, 2000, the applicant attempted to enter the United States by presenting a Form I-551 in someone else's name.<sup>1</sup> On November 13, 2000, the applicant was expeditiously removed from the United States. On an unknown date before December 8, 2001, the applicant reentered the United States without inspection.<sup>2</sup> 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); section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II); section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(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 naturalized United States citizen wife and children.

The District Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for being unlawfully present in the United States after a previous immigration violation, and 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 found that the applicant is "ineligible to apply for consent to reapply for admission to the United States," and based on his false claim to United States citizen, he is ineligible for a waiver. *District Director's Decision*, dated June 22, 2006. 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.-

(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.

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<sup>1</sup> The AAO notes that the Form I-551 presented by the applicant belonged to his brother, [REDACTED]. On December 8, 2001, the applicant married [REDACTED], a lawful permanent resident at the time, in Nevada.

(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.

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.- Any alien who-

- (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
- (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

Section 212(a)(6). Illegal entrants and immigration violators.-

(C) Misrepresentation.-

(i) In general.- 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 (including section 274A) or any other Federal or State law is inadmissible.

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

On appeal, the applicant, through counsel, contends that the applicant "did not declare to be a United States citizen. [The applicant] did not verbally nor physically present any documents indicating he was a United States citizen." *Appeal Brief*, page 7, filed August 14, 2006. The AAO notes that under section

212(a)(6)(C)(ii) of the Act, an alien only has to falsely represent himself/herself to be a citizen of the United States, and there is no requirement that the alien present a document indicating that he/she is a United States citizen. During the applicant's July 28, 1997 interview with an immigration officer, the applicant stated that when he applied for admission, he claimed to be a United States citizen, born in Oceanside, California. *See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated July 28, 1997. The applicant then admitted to his true name and nationality. *Id.*

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)(iii) of the Act. Additionally, the applicant is inadmissible to the United States under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for being ordered removed under section 235(b)(1) of the Act, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact in order to enter the United States.

*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 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.