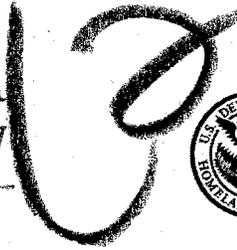


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U.S. Department of Homeland Security  
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Washington, DC 20536

U.S. Citizenship  
and Immigration  
Services



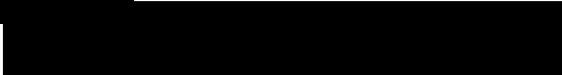
FILE:



Office: National Benefits Center

Date: APR 22 2004

IN RE: Applicant:



APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Missouri Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The matter will be remanded for further consideration and action.

The director found that the applicant was inadmissible to the United States under section 212(a)(6)(C)(ii)(I) of the Immigration and Nationality Act (INA), which states: "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 247A) or any other Federal or State laws is inadmissible." The director noted that this provision had been invoked against the applicant in a prior proceeding. "On April 28, 1998," the director stated, "you were found to be inadmissible to the United States by the Bureau at SAN YSIDRO for making a FALSE CLAIM TO UNITED STATES CITIZENSHIP, presented with Form I-860 and EXPEDITIOUSLY REMOVED FROM THE UNITED STATES." (Emphasis in the original.) The director also cited another provision of law as precluding waivers for aliens found inadmissible under section 212(a)(6)(c)(ii)(I). Accordingly, the director concluded that the applicant was ineligible for admission to the United States and denied her LIFE application.

On appeal, counsel asserts that the applicant "has never made a false claim to United States citizenship." According to counsel, therefore, "the denial based upon [section] 212(a)(6)(ii)(I) is in error and this appeal should be granted." On the appeal form, filed May 6, 2003, counsel indicated that he needed 45 days to submit a brief and/or evidence to this office. Up to the date of this decision, however, no such brief or evidence has been received.

Section 1104(c)(2)(D)(i) of the LIFE Act specifies that an applicant for permanent resident status must establish that he or she is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the INA. (The applicant must also establish that (s)he has not been convicted of a felony or three misdemeanors in the United States, has not assisted in persecution activities, and is registered under the Military Selective Service Act, if required. See section 1104(c)(2)(D)(ii), (iii) and (iv) of the LIFE Act.) Section 245A(d)(2) of the INA (which allows the grounds for an alien's exclusion to be waived in certain cases) provides that any provision of section 212(a) of the INA (defining classes of aliens who are ineligible for visas or admission) may be waived on a case by case basis for "humanitarian purposes, to assure family unity, or when it is otherwise in the public interest," unless the grounds for the alien's exclusion involve certain criminal convictions (section 212(a)(2)(A) and (B), INA), drug offenses (section 212(a)(2)(C), INA), national security violations (section 212(a)(3), INA), or the likelihood of becoming a public charge (section 212(a)(4), INA). See section 245A(d)(2)(B) of the INA. The foregoing provisions govern the grounds of inadmissibility and waivers for amnesty applicants under section 1104 of the LIFE Act and section 245A of the INA (enacted earlier as part of the Immigration Reform and Control Act of 1986, or IRCA). The provision of law cited by the director as precluding the possibility of a waiver applies to other types of applications for admission or adjustment of status (*i.e.*, not including amnesty applicants).

The record includes I-213 forms (Record of Deportable/Inadmissible Alien) involving the applicant, indicating that she was twice apprehended trying to enter the United States illegally, on consecutive days in late April 1998, and removed both times to her native Mexico. (The applicant had a different A-number in those removal proceedings [REDACTED] than she has in the current LIFE application.) On the first occasion, April 27, 1998, the applicant applied at Calexico, California, for admission to the United States as a visitor for pleasure, presenting an I-586 BCC (Border Crosser Card) [REDACTED] to the immigration inspector. The card belonged to another individual, however, and the applicant admitted that she had purchased it in Tijuana. The inspector found the applicant in violation of section 212(a)(6)(C)(i) of the INA, which provides that "[a]ny 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." The applicant was served with a Form I-860 and removed the same day pursuant to section 235(b)(1) of the INA. The very next day, April 28, 1998, the

applicant applied for admission to the United States at San Ysidro, California, presenting a U.S. passport which had been lawfully issued to another individual. When questioned, the applicant admitted that she had purchased the passport in Tijuana. The inspector found the applicant in violation of section 212(a)(6)(C)(ii) of the INA (falsely claiming citizenship), section 212(a)(7)(A)(i)(I) of the INA (not in possession of a valid entry document), and section 212(a)(9)(A)(i) of the INA (seeking entry within five years of removal under section 235(b)(1) of the INA). The applicant was served with a Form I-862 and returned to Mexico. A hearing was scheduled before an immigration judge on July 16, 1998 to consider the applicant's request for relief from removal. The applicant did not appear at the hearing, however, whereupon the judge upheld her removal.

While section 212(a)(6)(C)(ii)(I) of the INA, as well as section 212(a)(6)(C)(i), are valid grounds to rule the applicant inadmissible to the United States, section 245A(d)(2) is the operable provision governing the possibility of a waiver in her LIFE application. Because section 245A(d)(2) allows for a waiver of the applicant's grounds of inadmissibility, the director shall accord the applicant the opportunity to file a waiver application. When the adjudication of the waiver application is complete, the application for permanent resident status shall be adjudicated.

**ORDER:** This matter is remanded for further consideration pursuant to the foregoing analysis.