U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: SAN FRANCISCO, CALIFORNIA Date: JUN 25 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The District Director's decision will be withdrawn, appeal will be dismissed and the application declared moot.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States 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), as an alien who falsely represented herself to be a citizen of the United States for any purpose or benefit under this Act. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her naturalized U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse and children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon her U.S. citizen spouse or children and denied the application accordingly. *See District Director's Decision* dated June 26, 2001.

On appeal counsel spouse asserts that the Immigration and Naturalization Service ("Service", now known as Citizenship and Immigration Services, "CIS") erred in finding the applicant inadmissible under section 212(a)(6)(C)(ii) of the Act for having falsely represented herself as a citizen of the United States and that she is not inadmissible under that section of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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 (including section 274A) or any other Federal or State law is inadmissible.

In his decision the District Director states that in October of 1992 the applicant entered the United States by using "a friend's United States passport." He further states that the applicant attempted entry in May of 1994 but on this occasion she encountered a border patrol agent who took the passport, which did not belong to her.

A thorough review of the record of proceedings reveals the following facts. On October 29, 1992, at the San Francisco International Airport the applicant was admitted as a visitor for pleasure after presenting her Mexican passport with a valid non-immigrant visa. The applicant remained longer than authorized and according to her own statement departed the United States on March 6, 1994. The record further reflects that on April 18, 1994, at the Oakland, California International Airport the applicant applied for admission into the United States by presenting a valid Mexican passport and the same valid non-immigrant visa she had presented in 1992.

The applicant was referred for a deferred inspection because she was found inadmissible under section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa or lieu document. It was determined that she had remained longer than her original authorized stay when she was admitted in to the country on October 9, 1992, and on April 18, 1994, she was returning to the United States to resume her residence. On the Order to Appear for Deferred Inspection (Form I-546) it is noted that the applicant is inadmissible under section 212(a)(6)(C) of the Act 8 U.S.C. § 1182(a)(6)(C). The immigration inspector based his finding on the fact that the applicant applied for and received a non-immigrant visa at the American Consulate in Guadalajara on September 1, 1992. She applied for the visa a little over a month before marrying her spouse. The applicant was married on October 5, 1992, in Mexico and applied for admission into the United States on October 29, 1992.

On May 2, 1994, at the deferred inspection interview, the applicant was permitted to withdraw her application for admission and was given permission to depart the United States on or before May 11, 1994. Her non-immigrant visa was cancelled pursuant to section 212(a)(7)(A)(i)(I) of the Act. Although it is mentioned on the Notice of Visa Cancellation/Boarder Crossing Card Voidance (Form I-275) that the applicant acquired her non-immigrant visa a little bit over a month before she got married she was not charged with inadmissibility under section 212(a)(6)(C)(i) of the Act. The applicant departed the United States and reentered without inspection in July 1994. She has remained in the United States without a lawful admission or parole since that time.

In the present case, a review of the record does not reflect any documentation to substantiate the District Director's finding of the applicant's inadmissibility under section 212(a)(6)(C)(ii) of the Act for having represented herself as a U.S. citizen. The record of proceedings clearly reflects that on October 29, 1992, and on April 18, 1994, the applicant applied for admission into the United States by presenting a valid Mexican passport and a valid non-immigrant U.S. visa. There is nothing in the applicant's alien file to support a false claim to a U.S. citizenship. Absent supporting documentation, the AAO is unable to confirm the director's conclusion that the applicant was inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act for having represented herself as a U.S. citizen. Additionally the AAO finds that the applicant is not inadmissible under 212(a)(6)(C)(i) of Act since this office does not think that not admitting to an upcoming marriage in Mexico is misrepresentation.

The AAO thus finds that the District Director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. As such, the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

ORDER: The District Director's decision is withdrawn, as it has not been established that the applicant is inadmissible. The appeal is dismissed.