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U.S. Citizenship and Immigration Services

[redacted]

MAR 23 2004

FILE: [redacted] Office: SAN ANTONIO, TEXAS Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under sections 212(a)(9)(B) and 212(a)(6)(C) of the Immigration and Nationality Act, 8 U.S.C.§§ 1182(a)(9)(B) and 1182(a)(6)(C).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (I-212 Application) was denied by the District Director, San Antonio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. On March 5, 1998, the applicant was apprehended in Texas, by Immigration and Naturalization Service (Service) agents, for working illegally. On September 28, 1999, the applicant was apprehended in Texas, by Service agents, for illegal presence in the United States. The record contains no information to indicate whether the applicant was placed into removal proceedings or whether he was ordered removed subsequent to his 1998 and 1999, Service apprehensions.

The record reflects that on August 31, 2000, the applicant was apprehended in Laredo, Texas, by Service agents, and that he admitted to being illegally present in the U.S. at that time. The applicant signed a Form I-826 notification of his rights, on August 31, 2000, waiving his right to an Immigration Court hearing, and indicating that he wanted to return to Mexico. On September 1, 2000, the applicant was found guilty in the U.S. District Court, Southern District of Texas, of violating 8 U.S.C. § 1325(a)(3), for unlawfully entering the U.S. at a place other than as designated by immigration officers.

According to the August 31, 2000, Form I-213, Record of Deportable Alien (Form I-213) contained in the record, the applicant initially claimed to be a U.S. citizen at the time of apprehension, and presented a U.S. birth certificate in the name of [redacted] No. 1901-103. The Form I-213 reflects that after extensive questioning, the applicant later admitted that he was not a U.S. citizen and that the U.S. birth certificate was not his. The record additionally reflects that the applicant stated on his I-212 application that he used or was known by the name [redacted] in the past.

The district director determined that the applicant had claimed to be a U.S. citizen in violation of section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), and that he was therefore statutorily ineligible for a waiver of inadmissibility. The district director concluded that no purpose would be served in granting the applicant's I-212 application, and the application was denied accordingly.

On appeal, the applicant states that his wife and two children depend on him for financial support, and that they will lose their home if he is removed from the United States.

Section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), states, in pertinent part:

> (9) (A) Certain aliens 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.
> >
> > (ii) Other aliens.-Any alien not described in clause (i) who-

> (I) has been ordered removed under section 240 or any other provision of law, or
>
> (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date 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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

The AAO finds that, although the district director decision refers to the above grounds of inadmissibility under section 212(a)(9)(A) of the Act, neither the decision nor the record provide information or evidence to indicate that the applicant was ever placed into removal proceedings, or that he was previously ordered removed from the United States. Because the record fails to support a finding that the applicant is inadmissible under section 212(a)(9)(A) of the Act, as an alien that has been previously ordered removed, the AAO finds that the district director's adjudication of the applicant's I-212 application for Permission to Reapply for Admission into the United States after Deportation or Removal was erroneous, and that the applicant was not required to file the application.

Nevertheless, the AAO finds that the above error is harmless in the present case, because the record and the district director's decision reflect that the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act, and that he is therefore statutorily ineligible for a waiver of inadmissibility.

Section 212(a)(6)(C)(ii) of the Act relates to false claims to U.S. citizenship, and states in pertinent part:

> (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 no waiver of inadmissibility is authorized under section 212(a)(6)(C)(ii) of the Act, and that the applicant therefore could not have filed a Form I-601, application for waiver of grounds of excludability (inadmissibility) application. Accordingly the appeal will be dismissed.

ORDER: The appeal is dismissed.