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

invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FEB 25 2005

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

IN RE: Applicant: [redacted]

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

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 Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was denied by the District Director, San Antonio, Texas, 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 on December 21, 2000, was found removable from the United States by an Immigration Judge 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 himself to be a citizen of the United States for any purpose or benefit under this Act or any other Federal or State law. Consequently, on the same day the applicant was removed from the United States at the Laredo, Texas port of entry. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to travel to the United States to reside with his Lawful Permanent Resident (LPR) spouse.

The District Director determined that the applicant is not eligible for any exception or waiver under section 212(a)(6)(C)(ii) of the Act and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See District Director's Decision* dated March 17, 2003.

Section 212(a)(9)(A) of the Act states in pertinent part:

> (A) Certain aliens previously removed.-
>
> . . . .
>
> (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 . . . [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 [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On appeal, counsel states that the applicant never claimed to be a U.S. citizen in either writing or orally, the application used by the Service to establish the ground of inadmissibility was not filed by the applicant with regard to citizenship and that the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) dropped the charge in the removal proceedings realizing that it could not be established.

Counsel's assertions are not persuasive. The record of proceedings reflects that on June 21, 2000, the applicant filed a Firearms Transaction Record (Form ATF F 4473) in connection with his purchase of a firearm. In section 9 question 1 it asks: "Are you a citizen of the Untied States?" The applicant answered "yes". The Form ATF F 4473 was signed by the applicant and therefore he did represent himself as a U.S.

citizen on an official document. An individual can be found inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act even if there is not application for citizenship. Finally, INS did not drop the charge in the removal proceedings but instead on August 1, 2000, filed Additional Charges of Inadmissibility/Deportability (Form I-261) to the original Notice to Appear issued on July 11, 2000. The additional charges were for the applicant's false claim to U.S. citizenship on Form ATF F 4473.

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

> (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.
> >
> > (II) EXCEPTION- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

As noted above any false representation to U.S. citizenship for any purpose or benefit under the Act or any other Federal of State law renders the individual inadmissible under Section 212(a)(6)(C)(ii) of the Act. Based on the above facts the applicant is clearly inadmissible under section 212(a)(6)(C)(ii) of the Act. There is no waiver available under this section 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, which is very specific and applicable. No waiver of the ground of inadmissibility under section 212(a)(6)(C)(ii) of the Act is available to an alien who 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. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.