



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CLEVELAND, OH

Date: JAN 09 2007

IN RE:



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:



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 waiver application was denied by the District Director, Cleveland, Ohio 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 was found to be inadmissible to the United States under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and 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. The applicant also has two U.S. citizen children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated April 6, 2005.*

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding the applicant inadmissible. *Form I-290B; Attorney's brief.* The AAO notes that counsel did not address the issue of extreme hardship.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a letter from the applicant's spouse; a statement from the applicant; FBI records; employment letters for the applicant's spouse; tax statements for the applicant and her spouse; and documentation from the time of the applicant's apprehension by immigration officers in El Paso, Texas. The entire record was reviewed and considered in rendering this decision.

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

Section 212(i) of the Act provides that:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of

admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The AAO notes that while aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford those aliens making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver. *Memorandum by [REDACTED] Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3.

The record reflects that on November 19, 1996 the applicant applied for entry into the United States from Mexico at the Paso Del Norte Bridge Port of Entry in El Paso, Texas by claiming to be a United States citizen and presenting a false United States birth certificate. *Form I-213*. When immigration officials requested identification to verify her identity with the birth certificate, the applicant could not present a positive identification and was referred to secondary inspection. *Id.* During her secondary interview, the applicant stated she was a Mexican citizen and provided immigration officials with the false name of [REDACTED]. *Id.* The AAO acknowledges counsel's assertion that the applicant provided her true name to the immigration officials during the secondary interview, however, this assertion conflicts with the record. *Attorney's brief; Form I-213; See also Form I-485 notes.*

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. Counsel states that although the applicant misrepresented herself, she made a timely retraction and is thus not inadmissible. *Attorney's brief.* The AAO notes that a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for section 212(a)(6)(C)(i) ineligibility. *9 FAM 40.63 N4.6.* Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.* The AAO finds that the applicant did not timely retract her misrepresentation, as her retraction occurred during the secondary interview and not during her initial questioning by the immigration officials and, in addition, instead of providing her true identity, she provided another false name. Even if the "retraction" were to be considered timely, her use of a second false identity would negate any benefit gained by the retraction. The AAO also finds that the applicant is not eligible for a waiver of this misrepresentation because she falsely claimed to be a U.S. citizen after September 30, 1996.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.