U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: EL PASO, TX Date: MAY 02 2007

IN RE: [redacted]

PETITION: 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 PETITIONER:

[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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, El Paso, 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 was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), by falsely claiming United States citizenship so as to procure admission to the United States. The applicant is the brother of two siblings who are naturalized U.S. citizens and a sibling who is a lawful permanent resident. He seeks a waiver of inadmissibility so as to remain in the United States.

The record reflects that during an interview on February 11, 2004, the applicant revealed that in February 1995 he attempted to enter the United States by claiming to be a citizen of the United States, and was subsequently returned to Mexico. *Decision of the District Director*, dated May 21, 2004. On the basis of the false claim of U.S. citizenship, the director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The director denied the applicant's waiver of inadmissibility pursuant to section 212(i) of the Act, finding that the establishment of extreme hardship under the provisions of the 212(i) waiver of inadmissibility does not apply to siblings. *Id.* The director dismissed a subsequent motion to reopen and reconsider.

In rendering this decision, the AAO has considered the entire record of proceeding.

The district director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act based on his falsely claiming citizenship before an immigration inspector in order to gain admission into the United States.

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

> (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 chapter 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 chapter . . . is inadmissible.
>
> . . . .
>
> (iii) Waiver authorized
> For provision authorizing waiver of clause (i), see subsection (i) of this

section.

Section 212(i) of the Act provides:

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 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 aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

> In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

The record contains the admission of the applicant. Although the statement in the file is not translated, the AAO has confirmed its contents, which states "[w]e went to the doctor in Juarez in February 1995 and when we crossed at the bridge we said that we were citizens and they sent us back."

The applicant's false claim to U.S. citizenship, which occurred prior to September 30, 1996, was made to a U.S. Government official to gain admission into the United States. Thus, the district director was correct in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

On appeal, counsel states that the applicant's declaration of citizenship in 1995 occurred before the enactment of the IIRAIRA. According to counsel, when the applicant made the declaration the law did not have a permanent bar to admission; he states that this is especially true for persons charged with inadmissibility under section 212(a)(6)(C)(i) of the Act. Citing to *INS v. St. Cyr*, 533 U.S. 289 (2001), counsel states that the U.S. Supreme Court has long-ruled that laws that have an adverse impact and are applied retroactively are unconstitutional.

Prior to the enactment of IIRAIRA, a false claim to U.S. citizenship was grounds for finding an alien inadmissible under section 212(a)(6)(C)(i) of the Act relating to fraud or willful misrepresentation of a material fact in certain cases. The fraud or material misrepresentation must have been made to procure a specific benefit under the Act, such as a visa, admission, or immigration document (i.e. a U.S. passport). The fraud or material misrepresentation must also have been made to a U.S. government official.

Following the enactment of IIRAIRA, an alien who made a false claim to U.S. citizenship to obtain any Federal or State benefit on or after September 30, 1996, would be inadmissible under section 212(a)(6)(C)(ii) of the Act. Section 344 of IIRAIRA did not create any waivers for immigrants found inadmissible under section 212(a)(6)(C)(ii) of the Act. Therefore, immigrants found inadmissible under section 212(a)(6)(C)(ii) of the Act are permanently inadmissible.

With the situation here, the applicant's false claim to U.S. citizenship was made prior to the enactment of IIRAIRA. Although he is inadmissible under section 212(a)(6)(C)(ii) of the Act, he qualifies for a waiver of inadmissibility. Thus, the provision of IIRAIRA, which does not allow for a waiver of inadmissibility for a false claim to U.S. citizenship made on or after September 30, 1996, is not applied retroactively to the applicant.

Counsel states that the applicant is eligible to apply for a waiver of inadmissibility. The applicant has not shown that he is eligible to apply for a waiver of inadmissibility. The district director was correct in denying the waiver of inadmissibility on the ground that a sibling of the applicant is not a qualifying relative under section 212(i) of the Act. Waivers under section 212(i) of the Act are only available to immigrants who are the spouse, son, or daughter of a U.S. citizen or lawful permanent resident. The applicant has provided no evidence of his parents' or spouse's immigration status and thus, their eligibility to be considered qualifying relatives under section 212(i) of the Act has not been established.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.