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

H2

FILE:

Office: VERMONT SERVICE CENTER

Date: FEB 17 2009

IN RE:

Applicant:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center, and the matter 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 Canada 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), for attempting to enter the United States by falsely claiming United States citizenship. The record indicates that the applicant is the husband of a United States citizen. 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 his spouse.

The Director determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for making a false claim to United States citizenship, and that “no waiver of that statute is available.” The Director denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Center Director*, dated September 19, 2006.

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

(C) Misrepresentation.-

(i) In general.-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.

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

(i) (1) The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) 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

[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...

Aliens making false claims to United States 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. As the applicant's false claim to United States citizenship occurred after September 30, 1996, the applicant is clearly inadmissible to the United States and not eligible for a waiver under section 212(a)(6)(C)(iii) of the Act.

On appeal, the applicant, through counsel, asserts that the "Director's [d]ecision is based upon a misinterpretation of the facts of this case and fails to correctly apply the applicable laws and principles." *Form I-290B*, filed October 18, 2006. The record reflects that on February 8, 2004, at the Edmonton International Airport, the applicant claimed to be a United States citizen in an attempt to gain entry into the United States. During secondary inspection, the applicant admitted to his Canadian citizenship. *See Withdrawal of Application for Admission/Consular Notification (Form I-275)*, dated February 8, 2004.

The AAO finds that because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his United States citizen spouse or whether he merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) 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.