U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SEATTLE, WA Date: MAY 06 2009

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 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.

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, 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 Acting District Director, Seattle, Washington 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), for having attempted to procure admission to the United States by fraud or willful misrepresentation on January 28, 2000. The applicant has a U.S citizen spouse, two U.S. citizen children and parents who are lawful permanent residents. He 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 family.

The acting district director concluded that there is no waiver available for applicants who are found to have falsely represented themselves as U.S. citizens in order to gain admission to the United States. The waiver application was denied accordingly. *Decision of the Acting District Director*, dated March 13, 2006.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) is estopped from characterizing the applicant's alleged statement as anything but a waivable misrepresentation, the applicant's timely retraction of his misrepresentation removes the misrepresentation from further consideration as a ground of inadmissibility, and the applicant was denied due process in that he was not advised of the consequences of making a false claim to U.S. citizenship. *Counsel's Brief*, dated May 10, 2006.

The record reflects that on January 28, 2000, the applicant applied for admission to the United States at the Calexico Port of Entry, California by claiming to be a U.S. citizen. *Form I-213*, dated January 28, 2000. The applicant was referred to secondary inspection where he was determined to be a citizen of Mexico and was then referred to the Port Enforcement Team (PET) for the initiation of removal proceedings. While in the custody of the PET the applicant was re-interviewed. During this interview the applicant admitted that he had no legal means of entering the United States and that if his attempt to enter had been successful he would have traveled to Phoenix to look for work. *Id.*

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 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 . . . is inadmissible.

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

Section 212(i) of the Act provides:

> (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 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.

> 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.

Furthermore, the AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of USCIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. See *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is

available only through the courts. The jurisdiction of the AAO is limited to that authority specifically granted through regulations at 8 C.F.R. 103.1. Accordingly, the AAO has no authority to address the petitioner's equitable estoppel claim.

In addition, counsel assertions that the applicant gave a timely retraction of his misrepresentation are not supported by the record. Counsel states that the applicant immediately and timely retracted any claim of U.S. citizenship, repeatedly acknowledging to immigration officers that he was not a citizen. *Counsel's Brief*, dated May 10, 2006. Counsel cites the Foreign Affairs Manual at 9 § 40.63 N4.6., stating that a timely retraction will serve to purge a misrepresentation. Counsel also quotes *Llanos-Senarillos v. United States*, in which the Ninth Circuit held that "[i]f the witness withdraws the false testimony of his own volition without delay, the false statement and its withdrawal may be found to constitute one inseparable incident out of which an intention to deceive cannot rightly be drawn." 177 F.2d 164, 165 (9th Cir. 1949).

The record establishes that the applicant did not immediately retract his false statement, without delay and on his own volition. He did not admit to having no legal means to enter the United States until he was re-interviewed by the PET, after he had been through primary inspection and referred to secondary inspection. In the applicant's case, he only revealed his true identity after having unsuccessfully attempted to procure admission by falsely claiming U.S. citizenship and after the authorities determined him to be a citizen of Mexico.

Finally, the AAO notes that constitutional issues are not within the appellate jurisdiction of the AAO. Counsel's assertion regarding a violation of the applicant's due process rights will therefore not be addressed in this decision.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.