U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

H4

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

**PUBLIC COPY**

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 26 2006

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal 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, Chief
Administrative Appeals Office

**DISCUSSION**: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center, 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 January 9, 1999, at the San Ysidro, California, Port of Entry, orally represented herself to be a citizen of the United States in order to gain admission into the United States. The applicant was found to be inadmissible 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 represents herself to be a citizen of the United States for any purpose or benefit under the Act, and section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(7)(A)(i)(I), for being an immigrant not in possession of a valid immigrant visa or other valid entry document. Consequently, on January 10, 1999, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record reflects that the applicant reentered the United States on or about January 14, 1999, without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) 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 and reside with her U.S. citizen spouse and children.

The Director determined that the applicant is not eligible for any exception or waiver under section 212(a)(6)(C)(ii) of the Act. In addition, the Director determined that the applicant was inadmissible pursuant to section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), for having been unlawfully present in the United States for one year or more, and section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for having reentered the United States without being admitted after an immigration violation. Finally, the Director determined that the unfavorable factors in the applicant's case outweighed the favorable ones. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated October 17, 2005.

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

> (A) Certain aliens previously removed.-
>
> > (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years 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 denial of the Form I-212 is not only erroneous, but also egregiously unfair. Counsel notes that the Form I-212 was initially approved but then reopened and subsequently denied. Counsel states that the applicant is the beneficiary of an approved Form I-130, and the mother of U.S. citizen children. In addition, counsel states that the separation of the applicant's children from their U.S. citizen father has been an extremely difficult punishment to endure. Counsel further states that the Director overlooked the fact that the applicant's spouse cannot provide for their children's care alone because he is the sole financial provider and needs to work full time to support his family. Additionally, counsel states that the applicant has strong equities in the United States, does not have any criminal record and complied with the immigration laws of the United States. Furthermore, counsel states that the Form I-212 should be granted because the applicant's child suffers from Urticaria Pigmentosa and cannot receive adequate medical care in Mexico, causing extreme and unusual hardship. Finally counsel requests that the AAO acknowledge the error made by the Director in denying an application that was initially approved and reverse the decision to allow the applicant to apply for adjustment of status based on the approved Form I-130.

Counsel's statement regarding the Director's error in denying a previously approved application, is not persuasive. Pursuant to the regulations at 8 C.F.R. § 103.5, the Director may reopen the proceeding or reconsider a prior decision. The AAO notes that the Form I-212 was granted on October 7, 2005. As will be discussed, because the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act and not eligible for any exception or waiver, the Director properly reopened the proceeding in the present case.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. To recapitulate, on January 9, 1999, the applicant represented herself to be a citizen of the United States in order to gain admission into the United States. A false representation of U.S. citizenship may be either an oral representation or one supported by an authentic or fraudulent document. In the present case, the applicant made an oral representation of U.S. citizenship in order to gain admission into the United States. Therefore, the applicant is clearly inadmissible under section 212(a)(6)(C)(ii) of the Act.

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.

The applicant in the instant case does not qualify for the exception under section 212(a)(6)(C)(ii)(II) of the Act, and there is no other waiver available.

*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. No waiver is available to an alien who has 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. Accordingly, as the applicant is not admissible to the United States, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.