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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: DETROIT, MI Date: AUG 07 2008

IN RE: [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 Field Office Director, Detroit, Michigan, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Montenegro (formerly Yugoslavia) who, on October 25, 2000, attempted to enter the United States at the San Ysidro, California Port of Entry by verbally claiming to be a U.S. citizen. The applicant was referred to secondary inspections where he admitted that he was not a U.S. citizen and indicated that he feared returning to his home country. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(ii) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(ii) and 1182(a)(7)(A)(i)(I), for falsely claiming to be a U.S. citizen and being an immigrant without valid documentation. The applicant was scheduled for a credible fear interview. On November 17, 2000, the applicant was placed into immigration proceedings pursuant to credible fear interview procedures. On February 14, 2002, the applicant filed an Application for Asylum and Withholding of Removal (Form I-589) with the immigration court. On September 5, 2004, the applicant married his U.S. citizen spouse, [redacted] in Beverly Hills, Michigan. On September 29, 2004, the immigration judge denied the applicant's applications for asylum and withholding of removal, and ordered him removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On January 13, 2005, [redacted] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On February 7, 2006, the Form I-130 was approved. On March 13, 2006, the BIA dismissed the applicant's appeal. The applicant filed a motion to reopen with the BIA. On June 16, 2006, the BIA denied the applicant's motion to reopen. On August 6, 2006, the applicant departed the United States and returned to Montenegro, where he has since resided. On April 10, 2007, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). He 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 reside in the United States with his U.S. citizen spouse.

The field office director determined that the applicant was mandatorily inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act and no purpose would be served in adjudicating the Form I-212. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision* dated June 13, 2007.

On appeal, counsel contends that the U.S. Consulate in Belgrade informed the applicant that he would only require an approved application for permission to reapply for admission in order to be granted an immigrant visa. *See Counsel's Letter,* dated August 9, 2007. In support of her contentions, counsel submits the referenced letter, an affidavit from the applicant's spouse, country conditions reports and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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.

ii. Exception-

> In the case of an alien making a representation described in subclause (I), if each natural parents 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.

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

As of September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208, aliens making false claims to U.S. citizenship are statutorily ineligible for a waiver of inadmissibility. *See* sections 212(a)(6)(C)(ii) and (iii) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(ii) and 1182 (a)(6)(C)(iii). Therefore, if an alien makes a false claim to U.S. citizenship on or after September 30, 1996, the alien is subject to a permanent ground of inadmissibility.

On appeal, counsel contends that a consular officer at the U.S. Consulate in Belgrade indicated to the applicant and [redacted] during an interview that, because the applicant's verbal claim to U.S. citizenship was made under duress, his false claim to U.S. citizenship would not bar his admission. Counsel asserts that, at the time the applicant entered the United States, he did not speak English and was told by smugglers that if he did not answer yes to the questions asked of him at the port of entry he would be killed. Counsel asserts that the applicant did not know what was being asked of him at the time of his entry and responded in the positive to being a U.S. citizen under the fear of death. *See Form I-290B and Counsel's Letter.* The applicant's spouse, in her affidavit, states that the consular officer indicated that he found no basis for denying the applicant's immigrant visa other than his inadmissibility under section 212(a)(9)(A)(ii) of the Act. She states that she specifically reminded the consular officer of her husband's verbal claim to U.S. citizenship. She states that the consular officer informed her that the applicant would not be barred because he had made claim under duress and while he did not understand English. She states that the applicant informed her that he was 19 years old and was threatened by smugglers to answer yes to any and all questions asked of him by the immigration officers at the port of entry. She states that the applicant was unaware that one of those questions was whether he was a U.S. citizen. *See Affidavit,* dated August 4, 2007.

The Record of Sworn Statement in Proceedings (Form I-867B, dated October 26, 2000) indicates that, after being placed in secondary inspection, the applicant admitted that he was not a U.S. citizen and that he did not have documentation to enter the United States. The applicant admitted that he attempted to enter the United States by stating that he was a U.S. citizen. The applicant admitted that he knew he was making a false claim

to U.S. citizenship. The applicant admitted that he knew it was illegal to attempt to enter the United States by making this claim and that "everyone told me that." The record reflects that the applicant was not under the misconception that he was a U.S. citizen at the time he made the false claims to U.S. citizenship and that both of his parents were citizens of Yugoslavia (now Montenegro). The applicant made these statements in the Albanian language through an interpreter. The record reflects that the applicant admitted to all of the allegations in the Notice to Appear (Form I-862), including making a false verbal claim to U.S. citizenship, before the immigration court. The applicant stated before the immigration court that he was told by people he believed were Americans that he should make the false claim to U.S. citizenship in order to enter the United States. *See Court Transcript.* At no time did the applicant indicate that he did not know that he was making a false claim to U.S. citizenship or that he was threatened by smugglers to make such a claim. Counsel and Ms. assertions are contrary to the statements made by the applicant.

The record does not support a finding that the applicant made the false claim to U.S. citizenship under duress. Instead, it supports a finding that the applicant was aware that he was making a false claim to U.S. citizenship at the time he made the verbal claim. The AAO concludes that the applicant made an oral false claim to U.S. citizenship in an attempt to enter the United States in 2000, and is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act.

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 inadmissible under the provisions of section 212(a)(6)(C)(ii) of the Act and no waiver is available. 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. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.