U.S. Department of Homeland Security
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PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 16 2008
RELATES)

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 Director, California Service Center, 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 Mexico who, on August 11, 1999, attempted to enter the United States at the San Ysidro, California Port of Entry by presenting a U.S. birth certificate belonging to another and bearing the name "[redacted]." The applicant was referred to secondary inspections where he admitted that he was not a U.S. citizen and provided a false name and date of birth as his true identity. 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), for falsely claiming to be a U.S. citizen. On August 12, 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), under the name "[redacted]." On September 19, 1999, the applicant again attempted to enter the United States at the San Ysidro, California Port of Entry by presenting a U.S. birth certificate belonging to another and bearing the name "[redacted]." The applicant was referred to secondary inspections where he admitted that he was not a U.S. citizen and provided a false name and date of birth as his true identity. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, for falsely claiming to be a U.S. citizen. On September 20, 1999, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act under the name "[redacted]." On March 7, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed on his behalf by his naturalized U.S. citizen spouse, [redacted]. On April 12, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) San Diego District Office. The applicant testified that he had sought to enter the United States by presenting a U.S. birth certificate belonging to another and that he had reentered the United States after having been removed without a lawful admission or parole and without permission to reapply for admission on September 21, 1999. On April 12, 2002, the Form I-130 was approved. On August 15, 2002, the Form I-485 was denied. On May 11, 2006, 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 and son.

The AAO notes that, on the Form I-212, the applicant indicates that he currently resides in Mexico. The applicant's statement on the Form I-212, however, is insufficient proof of his residence in Mexico. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Additionally, evidence in the record, such as employment records, indicate that the applicant still resides in the United States.

The 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 director denied the Form I-212 accordingly. *See Director's Decision* dated March 27, 2007.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. *See Form I-290B,* dated April 26, 2007. In support of her contentions, counsel submits the referenced Form I-290B, a cover letter, letters of recommendation, financial documentation 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 –
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> 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 August 12, 1999, and September 20, 1999, the applicant was expeditiously removed from the United States. The corresponding determinations of inadmissibility (Form I-860, dated August 12, 1999, and September 20, 1999) indicate that the applicant presented documentation claiming to be a U.S. citizen in order to seek entry into the United States and was deemed inadmissible for making a false claim to U.S. citizenship on both occasions. The Records of Sworn Statement in Proceedings (Form I-867B, dated August 12, 1999, and September 20, 1999) indicate 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 also admitted that it was his intention to enter the United States in order to reside and work. 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 Mexico.

On appeal, counsel contends that the director erred in finding the applicant inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act because the director's claim that the applicant made a false claim to U.S. citizenship is unsupported by evidence contained in a Freedom of Information Act (FOIA) request that counsel filed. *See Form I-290B.* In filing additional evidence to support the appeal, counsel fails to provide a copy of the evidence she claims was included in the FOIA request in the applicant's case. Counsel, in filing additional evidence, states that as part of the applicant's appeal she requested a copy of the Record of Proceeding (ROP) but did not receive a response, and again requests a copy of the ROP because it is difficult to respond to the alleged evidence without receiving a copy of it. *See Cover Letter,* received April 29, 2008. The AAO notes that counsel's request for a copy of the ROP is inappropriately made on appeal and should be made by the filing of a FOIA request. There is no evidence in the record to indicate the applicant ever filed a FOIA request in order to review the records to which the director cited.

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.