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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 16 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 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 April 14, 2001, married his U.S. citizen spouse, [redacted]. On April 25, 2001, [redacted] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on March 28, 2002. On August 11, 2001, the applicant attempted to enter the United States at the Calexico, California Port of Entry by verbally stating that he was a U.S. citizen. The applicant was then referred to secondary inspections where he admitted that he was not a U.S. citizen and had previously, on August 9, 2001, been prevented from entering the United States due to lack of valid documentation. 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 the same day, 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 August 12, 2001, the applicant again attempted to enter the United States at the Calexico, California Port of Entry by verbally stating that he was a U.S. citizen. The applicant was then referred to secondary inspections where he admitted that he was not a U.S. citizen and had previously been removed from the United States for making a false claim to U.S. citizenship. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), for falsely claiming to be a U.S. citizen. On the same day, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act under the name "[redacted]." On January 3, 2005, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), based on the approved Form I-130. On June 1, 2005, the applicant's Form I-485 was denied. On September 5, 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 with his U.S. citizen spouse and daughter.

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 April 12, 2007.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act and warrants discretionary relief. *See Counsel's Brief and Counsel's Declaration,* dated June 1, 2007. In support of his contentions, counsel submits only the referenced brief and declaration. 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 August 11, 2001, and August 12, 2001, the applicant was expeditiously removed from the United States. The corresponding determinations of inadmissibility (Form I-860, dated August 11, 2001 and August 12, 2001) indicate that the applicant made an oral false claim to U.S. citizenship 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) indicate that, after being placed in secondary inspections, 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 he made an oral false claim to U.S. citizenship in order to enter the United States. 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 claim to U.S. citizenship and that both of his parents were citizens of Mexico.

In his declaration, counsel states that the applicant did not present a false written document and that the immigration officials at the port of entry relied upon the applicant's oral representations only. Counsel contends that the applicant denies making any written statement or signing any documents at the port of entry and that his misrepresentation is an offense that may be waived. However, the record contains two Records of Sworn Statement in Proceedings (Form I-867Bs) that establish that the applicant admitted to making oral false claims to U.S. citizenship in order to enter the United States and both documents are signed by the applicant. Moreover, the AAO finds counsel's assertion, that an oral false claim to U.S. citizenship results in an inadmissibility that may be waived, to be unpersuasive. Counsel fails to cite any precedent legal decisions to support his reading of 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.