

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H4



FILE:

Office: VERMONT SERVICE CENTER

Date: APR 23 2009

IN RE:



APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(iii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(A)(iii) and 1182(a)(9)(C)(iii)

ON BEHALF OF APPLICANT: Self-represented

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 Guyana who, on October 13, 1996, appeared at John F. Kennedy International Airport. The applicant presented a U.S. passport bearing the name [REDACTED]. The applicant was placed into secondary inspections. The applicant admitted to immigration officers that he was not the true owner of the document, he was not a U.S. citizen, his parents were not U.S. citizens and he did not have any valid documentation to enter the United States. The applicant was placed into immigration proceedings. The immigration judge ordered the applicant removed from the United States. On November 9, 1996, the applicant was removed from the United States and returned to Guyana.

On May 2, 2001, the applicant was convicted of conspiracy to commit extortion in violation of 18 U.S.C. § 371. The applicant was sentenced to 24 months in jail and three years of probation. On August 24, 2001, a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued pursuant to section 241(a)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1231(a)(5). The applicant had reentered the United States without a lawful admission or parole and without permission to reapply for admission on December 5, 1997. On September 13, 2002, the applicant was removed from the United States and returned to Guyana, where he claims he has since resided. On August 14, 2006, the applicant filed the Form I-212. The applicant is inadmissible under sections 212(a)(9)(A)(i) and 212(a)(9)(C)(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(A)(i) and 1182(a)(9)(C)(i), as an alien who failed to remain outside the United States for a period of twenty years after his or her subsequent removal, and as an alien who has illegally reentered the United States after having been removed. He seeks permission to reapply for admission into the United States under sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(iii) of the Act, 8 U.S.C. §§ 1182(a)(9)(A)(iii) and 1182(a)(9)(C)(iii) in order to reside in the United States with his U.S. citizen spouse.

The director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The director determined that the applicant was not eligible to apply for permission to reapply for admission because he had not remained outside the United States for the required ten years. The director denied the Form I-212 accordingly. *See Director's Decision*, dated May 14, 2007.

On appeal, the applicant's spouse contends that her husband should be pardoned for his past actions. *See Attachments to Form I-290B*, dated June 1, 2007. In support of her contentions, the applicant's spouse submits only the referenced attachments. 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.

The AAO finds that the applicant, by presenting a U.S. passport issued to another on October 13, 1996, is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act for attempting to enter the United States by making a false claim to U.S. citizenship. The AAO also finds that the applicant is ineligible for the exception to the inadmissibility grounds under section 212(a)(6)(C)(ii)(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 adjudicating the application to reapply for admission into the United States under sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(ii) 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.