U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: OCT 06 2009
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.

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).

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, 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 January 3, 1998, appeared at the San Ysidro, California port of entry. The applicant presented a U.S. birth certificate bearing the name "[redacted]" The applicant was placed into secondary inspection. The applicant admitted that he was not the true owner of the document and that he did not have valid documentation to enter the United States. The applicant admitted that he had no claim to U.S. citizenship. The applicant admitted that he was aware that it was illegal to attempt to enter the United States by presenting this document. The applicant admitted that he had previously resided in the United States for three years. The applicant failed to provide his true identity to immigration officers by providing them with a different date of birth. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by fraud. On January 5, 1998, 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).

On April 8, 2001, the applicant married his then lawful permanent resident spouse in Los Angeles, California. On April 27, 2001, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. On June 29, 2005, the Form I-130 was approved. On November 29, 2005, the applicant filed the Form I-212, indicating that he resided in Mexico.[1] On December 8, 2005, the applicant's spouse filed a second Form I-130. On May 16, 2006, the Form I-212 was approved.

On June 26, 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130, indicating that he had entered the United States without inspection in June 2006. On September 27, 2006, the applicant appeared at U.S. Citizenship and Immigration Services' (USCIS) Los Angeles, California field office. The applicant testified that he had never been removed from the United States, that he had never made a willful misrepresentation in order to gain admission to the United States and that he had never made a claim to U.S. citizenship. On September 27, 2006, the second Form I-130 was approved. On November 15, 2008, the Form I-485 was denied. On January 8, 2009, USCIS reopened the applicant's Form I-212 because the applicant had illegally reentered the United States since filing the Form I-212 and he is also permanently inadmissible for making a false claim to U.S. citizenship. 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 now naturalized U.S. citizen spouse and four U.S. citizen children.

[1] Despite the applicant's claims that he reentered the United States after completing the Form I-212, the record reflects that the applicant reentered the United States prior to this date and was employed in the United States since November 24, 1998. Accordingly, the AAO finds that the applicant willfully misrepresented that he resided in Mexico at the time he completed and filed the Form I-212. As such, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining or attempting to obtain immigration benefits by fraud.

The field office director determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) and that there is no waiver available for this ground of inadmissibility. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision,* dated January 8, 2009.

On appeal, counsel contends that the applicant will be exposed to serious harm and prospect of removal due to the error in granting the Form I-212.[2] *See Counsel's Brief,* dated June 22, 2009. In support of her contentions, counsel submits only the referenced Form I-290B. On the Form I-290B, counsel indicates that she will forward additional evidence and/or a brief within thirty days. The regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to Form I-290B require the affected party to submit the brief or evidence directly to the AAO, not to the Los Angeles, California field office or any other federal office. The record does not contain the brief and/or evidence that counsel indicated would be submitted to the AAO. Even if counsel were to submit evidence that a brief was filed with an office other than the AAO, the AAO would not consider the brief on appeal because counsel failed to follow the regulations or the instructions for the proper filing location. Accordingly the record is complete.

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

[2] The AAO, like the Board of Immigration Appeals (BIA), is not required to approve applications or petitions where eligibility has not been demonstrated. Each petition or application must be adjudicated based on the evidence contained in the record. *Sussex Engineering, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (BIA 1988). Moreover, the record clearly reflects that the applicant did not file the Form I-212 in good faith since he concealed his unlawful reentry into the United States, which renders him ineligible to apply for permission to reapply for admission until he has remained *outside* the United States for a period of ten years. Finally, the applicant concealed his willful misrepresentation and false claim to U.S. citizenship at the time he applied for adjustment of status.

> 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 making a false claim to U.S. citizenship on January 3, 1998, is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. 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.