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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H4

Date: FEB 2 9 2012 Office: SAN DIEGO, CA FILE: [redacted]

IN RE: Applicant: [redacted]

PETITION: Application for Permission to Reapply for Admission into the United States after Prior Immigration Violations under Section 212(a)(9)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(ii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the District Director, San Diego, California. The District Director subsequently dismissed the applicant's appeal. The matter is now before the Administrative Appeals Office (AAO). The district director's decision dismissing the appeal will be withdrawn and the appeal will be dismissed.[1]

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for being an alien who was ordered removed from the United States and who reentered the United States without being admitted. The applicant is married to a U.S. citizen and seeks permission to reenter the United States in order to reside with is U.S. citizen wife and children.

The district director found that the applicant does not meet the requirements for consent to reapply because he is inadmissible under section 212(a)(9)(C) of the Act for reentering the United States without inspection and is currently living in the United States. The field office director denied the application accordingly. *Decision of the District Director*, dated March 9, 2011.

On appeal, counsel contends the applicant did not reenter the United States without inspection, but rather, was permitted to enter the United States by an immigration officer who did not interview him.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [redacted], indicating they were married on April 7, 2001; copies of the birth certificates of the couple's three U.S. citizen children; letters from the couple's daughter's physician; letters from the applicant's employer; copies of tax returns; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act states in pertinent part:

....

(C) Aliens unlawfully present after previous immigration violations. -

(i) In general. - Any alien who -

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[1] Counsel has filed a motion to reopen the district director's dismissal of his appeal. The AAO notes that the district director did not have jurisdiction to dismiss the appeal. *See* 8 C.F.R. § 103.3(a)(2)(ii), (iii), and (iv). Therefore, the AAO will withdraw the district director's improper dismissal of the appeal and adjudicate the appeal on the merits. The AAO also notes that we do not have jurisdiction to adjudicate the motion to reopen as the AAO was not the official who made the latest decision in the proceeding, *see* 8 C.F.R. § 103.5(a)(ii); nonetheless, our withdrawal of the district director's decision dismissing the appeal, in effect, renders the motion moot.

> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
>
> (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,
>
> and who enters or attempts to reenter the United States without being admitted is inadmissible.

The record reflects that on October 4, 1997 the applicant attempted to enter the United States by representing himself to be a U.S. citizen. The applicant was placed in expedited removal proceedings, ordered removed and removed from the United States the same day. The record also reflects that the applicant reentered the United States on December 6, 1997.

After a careful review of the record, the AAO finds counsel's contention that the applicant is not inadmissible under section 212(a)(9)(C) of the Act to be persuasive. The record shows, and the applicant has consistently asserted, that he did not reenter the United States without being admitted, but rather, was admitted to the United States without being questioned by an immigration officer. *See Notice to Appear (Form I-362)*, dated December 6, 1997 (stating the applicant applied for admission to the United States on December 6, 1997, at Calexico, California); *see also Record of Master Calendar Pre-Trial Appearance and Order (EOIR Form-55)*, dated March 28, 2007 (immigration judge noting that the applicant entered the United States in December 1997 through a port of entry and was not questioned); *Additional Charges of Inadmissibility/Deportability (Form I-261)*, dated January 19, 2006 (stating that on or about January 10, 1998, immigration inspectors at the Calexico, California, port of entry "waved [the applicant] through into the United States"); *Additional Charges of Inadmissibility/Deportability (Form I-261)*, dated May 24, 2005 (stating that the applicant was admitted to the United States without being interviewed by an immigration officer at the Calexico port of entry on or about January 10, 1998); *Record of Deportable/Inadmissible Alien (Form I-213)*, dated January 6, 2005 (stating that the applicant stated that the last time he crossed the border, he entered through the Calexico Port of Entry as a driver of a car and that an immigration inspector "waved him through"). The AAO finds this evidence sufficient to establish that the applicant did not enter without inspection and therefore, that the applicant is not inadmissible under section 212(a)(9)(C) of the Act.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

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 (including section 274A) or any other Federal or State law is inadmissible.
>
> . . . .
>
> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

In this case, the record reflects that on October 4, 1997, the applicant attempted to enter the United States by representing himself as a U.S. citizen at the Calexico point of entry. *Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated October 4, 1997 ("Q. What did you say to the inspector when you applied to enter the U.S.? A. That I am a U.S. citizen."); *Notice and Order of Expedited Removal (Form I-860)*, dated October 4, 1997. Therefore, the record shows that the applicant is inadmissible to the United States for making a false claim to U.S. citizenship. There is no waiver available for an applicant who makes a false claim to U.S. citizenship. *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 subject to the provisions of section 212(a)(6)(C)(ii) of the Act. No waiver is available to an alien who has falsely represented himself to be a citizen of the United States, 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.

ORDER: The appeal is dismissed.