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

U.S. Citizenship and Immigration Services

H4

[redacted]

DATE: JAN 03 2012 OFFICE: SAN BERNARDINO, CA FILE: [redacted]

IN RE: APPLICANT: [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:

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 Field Office Director, San Bernardino, 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 has resided in the United States since January 2007, when he entered the United States without inspection. On June 20, 2000, in an attempt to procure admission to the United States, he informed immigration officials that he was a U.S. Citizen. The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for having made a false claim to U.S. Citizenship, and he was ordered removed on June 21, 2000. The applicant was also found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). 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.

The Field Office Director concluded that because the applicant had falsely represented himself to be a U.S. Citizen after the enactment of IIRIRA (the Illegal Immigration Reform and Immigrant Responsibility Act) he was inadmissible and permanently barred from the United States and denied the application accordingly. *See Decision of Field Office Director* dated August 4, 2011.

On appeal, counsel for the applicant submits a brief in support of appeal as well as an updated affidavit from the applicant. In the brief, counsel asserts the Service's finding that the applicant made a false claim to U.S. Citizenship is unfair in that at the time of the claim, he was being asked questions in English, when he only speaks Spanish, he did not understand what was happening, and the applicant did not proffer any false documents regarding his citizenship. *Brief in support of appeal,* received September 11, 2011. The applicant corroborates this in his updated affidavit, adding that he had never claimed to be a U.S. Citizen. *Affidavit of applicant,* August 15, 2011. Moreover, counsel contends the applicant merits the benefit of the doubt, given the positive equities in his case. *Brief in support of appeal,* received September 11, 2011.

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).

Section 212(i) of the Act provides:

(ii) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Although the applicant asserts he never made a false claim to U.S. Citizenship, and in any event he did not understand the immigration officials when they spoke to him in English, the record does not support these assertions. In a sworn statement, the applicant admitted he was a citizen of Mexico, not of the United States. *Sworn statement,* June 21, 2000. When questioned about his attempted entry on June 20, 2000, the applicant admitted: "I was walking and I said I was a U.S. Citizen." *Id.* The record reflects that not only was this interview conducted in Spanish, but also that the entire sworn statement was read to the applicant in Spanish, and that the applicant signed the sworn statement attesting his answers were true and correct to the best of his knowledge. *Id.* The applicant was found to be inadmissible under sections 212(a)(6)(C)(ii) and 212(a)(7)(A)(i)(I) of the Act and was removed from the United States on the same day. *See Form I-860, Notice and Order of Expedited Removal and Form I-296, Departure Verification*, June 21, 2000. There is no waiver available for this ground of inadmissibility.

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 been found to have made a false claim to U.S. Citizenship, 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 Form I-212 was properly denied by the Field Office Director.

ORDER: The appeal is dismissed.