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

(b)(6)

[redacted]

DATE: JUL 28 2014 Office: SAN BERNARDINO File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission under section 212(a)(9)(A)(iii) the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii) and section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino, California denied the application for permission to reapply for admission, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision dismissing the appeal will be affirmed.

The applicant is a native and citizen of Mexico who attempted to enter the United States using a fraudulent U.S. birth certificate on March 3, 1998 and was removed on March 7, 1998. He reentered the United States without inspection or parole sometime later in March 1998 and has not departed. He 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). He is also inadmissible under section 212(a)(9)(A)(i) the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for seeking admission after expedited removal, and under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for reentry without inspection after removal. The applicant is seeking permission to reapply for admission in order to reside in the United States with his U.S. citizen father and children.

The field office director concluded the applicant's false citizenship claim subjects him to a ground of inadmissibility for which no waiver is available and, accordingly, denied the Application for Permission to Reapply for Admission to the United States after Deportation or Removal (Form I-212). *Decision of Field Office Director,* January 24, 2013. On appeal, we determined the record establishes that the applicant remains inadmissible under section 212(a)(6)(C)(ii) of the Act for seeking entry to the United States by presenting a California birth certificate as his own. We found that, because he made this false claim to U.S. citizenship on March 3, 1998, the applicant is permanently inadmissible under section 212(a)(6)(C)(ii) of the Act[1] and, as no waiver is available to an alien who falsely claims to be a U.S. citizen, no purpose would be served by the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii). *Decision of the AAO,* February 10, 2014.

On motion, the applicant provides a brief claiming the dismissal erred both substantively and procedurally and violated the applicant's due process rights. Although citing legal authority, the brief fails to address the permanent inadmissibility resulting from the applicant's false claim to U.S. citizenship. The record also contains documentation submitted in support of the original request for permission to reapply for admission. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

> 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.

Section 212(a)(6)(C)(ii) provides, in pertinent part:

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[1] Section 212(a)(6)(C)(ii) applies to false citizenship claims made on or after the September 30, 1996 date of enactment of IIRAIRA.

> 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.

According to the record, the applicant was removed pursuant to section 235(b)(1) of the Act on March 7, 1998 after attempting to procure entry to the United States on March 3, 1998 by presenting a false U.S. birth certificate to a U.S. immigration inspector at the port of entry.

Section 212(a)(6)(C)(iii) provides, "For provision authorizing waiver of clause (i), see subsection (i)," but does not provide for a waiver for violations falling under section 212(a)(6)(C)(ii) of the Act. Section 212(i) only provides a waiver to aliens found inadmissible under section 212(a)(6)(C)(i), but the applicant is inadmissible under section 212(a)(6)(C)(ii) for making a false claim to citizenship, for which no waiver is available.

Under *Matter of Martinez-Torres,* 10 I&N Dec. 776 (Reg. Comm. 1964), 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 section 212(a)(6)(C)(ii) of the Act, for which no waiver is available, and the appeal of the denial of the application for permission to reapply was properly dismissed as a matter of discretion as its approval would not result in the applicant's admissibility to the United States.[2]

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The prior decision of the AAO dismissing the appeal is affirmed.

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[2] As noted in our previous decision, the applicant is also currently statutorily ineligible to apply for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act because he is currently residing in the United States and has not remained outside the United States for 10 years since his last departure.