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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**

[REDACTED]

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FILE:

Office: PHILADELPHIA, PA

Date:

**MAR 09 2010**

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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 waiver application was denied by the District Director, Philadelphia, Pennsylvania, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guatemala who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for attempting to enter the United States by falsely claiming United States citizenship. The record indicates that the applicant is married to a United States citizen. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse, children, and stepchildren.

The District Director found the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for attempting to enter the United States by falsely claiming United States citizenship and that no waiver of that statute was available. He denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 15, 2006.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(C) Misrepresentation.-

(i) In general.-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 of the Act provides, in pertinent part, that:

(i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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...

Aliens making false claims to United States citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. As the applicant's false claim to United States citizenship occurred after September 30, 1996, the applicant is inadmissible to the United States and not eligible for a waiver under section 212(a)(6)(C)(iii) of the Act.

On appeal, the applicant, through counsel, asserts that "[a]lthough the record establishes that the [applicant] initially sought to misrepresent himself, the record does not establish that [the applicant] misrepresented himself to be a U.S. citizen." Counsel contends that the social security card and Pennsylvania identification card presented by the applicant are not, individually or in combination, evidence of U.S. citizenship. Counsel also claims that the applicant "timely retracted his misrepresentation."

The record reflects that on January 18, 2000, during pre-flight inspection at San Juan, Puerto Rico, the applicant attempted to enter the United States by claiming United States citizenship and presented a false Pennsylvania identification card and social security card in support of his claim. *See Record of Deportable/Inadmissible Alien (Form I-213)*, dated January 18, 2000. The AAO notes that it is the applicant's claim to United States citizenship, which he attempted to support with fraudulent documentation, that renders him inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act.

The record also fails to indicate that the applicant made a timely retraction of his claim to United States citizenship. The AAO acknowledges that a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground of ineligibility. *9 FAM 40.63 N4.6*. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.* In the present case, the applicant did not admit to his Guatemalan citizenship until he was in secondary inspection. *See Record of Deportable/Inadmissible Alien (Form I-213)*, dated January 18, 2000. As the applicant did not retract his misrepresentation during his primary inspection, his first opportunity to do so, his retraction was not timely.

The AAO finds that because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his United States citizen spouse or whether he merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.