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

(b)(6)

U.S. Citizenship and Immigration Services

Date: OCT 15 2014 Office: ATLANTA, GA FILE:

IN RE:

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

ON BEHALF OF APPLICANT:

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, Atlanta, Georgia denied the waiver application 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 Bangladesh who 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 making a false claim to U.S. citizenship. The applicant is married to a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility in order to remain in the United States with his family.

In a decision dated April 4, 2014, the director found that the applicant did not establish extreme hardship to his U.S. spouse and children and denied the waiver application.

In a prior decision, dated May 24, 2012, the field office director found that the applicant was not eligible for a waiver because, on October 14, 2008, he falsely claimed to be a U.S. citizen in order to obtain a driver's license. The field office director did not adjudicate the applicant's hardship claims in this prior decision because he found the applicant to be statutorily ineligible for a waiver because there is no waiver available for an applicant who falsely claims to be a U.S. citizen for a benefit under any state or federal law.

On appeal of the most recent denial, counsel states that the field office director erroneously concluded that the applicant had not established the extreme requirement under section 212(i) even though the applicant suffers from a heart condition, his spouse suffers from chronic migraines, and his daughter has been diagnosed with a learning disability. Counsel asserts that the field office director gave undue weight to an unproven and incorrect allegation that the applicant misrepresented his status in the United States to Georgia Department of Driver Services, even though the false statement charge against the applicant was dismissed.

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

> (i) 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
> >
> > (II) Exception—In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the 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.

The record indicates, through an arrest warrant issued on April 11, 2012 in County, Georgia, that on October 14, 2008, the applicant completed an application for a non-commercial driver's license and claimed to be a U.S. citizen on the application. The applicant was arrested and charged with "false statements and writings." This charge was dismissed on August 13, 2012. Inadmissibility under section 212 (a)(6)(C)(ii)(I) of the Act does not require a conviction, just a false representation of U.S. citizenship under any Federal or State law, so the dismissal is not relevant to the current case.

The Georgia Department of Driver's Services requires non U.S. citizen applicants for a driver's license to submit documentation of one's legal immigration status in the United States. *See* http://www.dds.ga.gov/secureid/acceptedocs.aspx. On October 14, 2008, the applicant had no legal status in the United States and would not have been able to obtain a driver's license, unless he claimed to have a legal immigration status. It is evident from the arrest warrant that the applicant claimed to be a U.S. citizen.

Counsel contests the finding of inadmissibility under section 212(a)(6)(C)(ii) of the Act, stating that when the applicant was arrested on April 17, 2012, he had an adjustment of status application pending and valid work authorization. Counsel states that the applicant's alleged false statement was made six days prior to his arrest and at that time he had a pending adjustment of status application and valid work authorization. Counsel states that this claim was made inadvertently when the applicant's wife filled out his application. Counsel also states that the applicant presented his valid work authorization card in support of his driver's license application.

Counsel's assertions are not persuasive. Counsel incorrectly states that the applicant made his false claim to U.S. citizenship on April 11, 2012, when the arrest warrant in the applicant's case clearly states that the false claim in question occurred on October 14, 2008. U.S. Citizenship and Immigration Services (USCIS) records indicate that though the applicant had prior work authorization based on his asylum application, his last work authorization was issued in December 2004 with an expiration date in December 2005. USCIS records further indicate that he applied for, but was denied, work authorization in November 2005 as his asylum application had been administratively closed. There is no indication that he applied for or was granted further work authorization until November 2009, based on a Form I-485, Application for Adjustment of Status (Form I-485), filed in conjunction with his Form I-130, Petition for Alien Relative (Form I-130). He, therefore, would not have had a valid work authorization in October 2008 when he filed the application for a Georgia driver's license. Furthermore, presenting a valid work authorization and social security number would not have met the documentation requirements for a license by the Georgia Department of Driver's Services. This is verified by a January 15, 2012 letter from the Georgia Department of Driver's Services which states "Typically, an employment authorization card alone is not sufficient documentation of a customer's lawful presence." Nor is possession of work authorization in itself considered a lawful immigration status by the USCIS. It is merely permission to work. Thus, the record establishes that in October 2008 the applicant did not have proper documentation to obtain a Georgia driver's license and claimed to be a U.S. citizen knowing he was not a citizen. The record establishes that the applicant made a false claim to U.S. citizenship to gain a benefit, a driver's license, under the state law of Georgia. The Act makes

clear that a foreign national must establish admissibility "clearly and beyond doubt." *See* section 235(b)(2)(A) of the Act. *See* also 240(c)(2)(A) of the Act. The same is true for admissibility in the context of an application for adjustment of status. See *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008). See *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008). See *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). In this case, the applicant has not shown clearly and beyond doubt that he is admissible to the United States.

Applicants making false claims to U.S. citizenship on or after September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, are inadmissible under section 212(a)(6)(C)(ii)(I) of the Act and are ineligible for waiver consideration. No waiver is available for a violation of section 212(a)(6)(C)(ii)(I) and the record fails to demonstrate that the applicant qualifies for the exception described in section 212(a)(6)(C)(ii)(II). In addition, the applicant has not been found to be inadmissible under any sections of the Act that would provide for I-601 waiver relief, so a discussion of extreme hardship to a qualifying family member and/or whether the applicant warrants a favorable exercise of discretion would serve no purpose.

Lastly, the field office director's denial of the applicant's Form I-485 states that the applicant is inadmissible under section 212(a)(6)(A) of the Act as an applicant present without admission or parole. He was found to be ineligible to adjust status under section 245(i) as his Form I-130 was not filed on or before April 30, 2001. The record indicates that the applicant does not have any basis to apply for adjustment of status so any inadmissibility grounds are irrelevant.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Here, the applicant has not met that burden. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.