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U.S. Citizenship
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Services

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FILE:

Office: LOS ANGELES, CA

Date: **MAY 19 2008**

IN RE:

PETITION: 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 PETITIONER:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and 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 was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). The applicant is the spouse of a U.S. citizen and is seeking to adjust his status to that of lawful permanent resident on that basis or, alternatively, under section 249 of the Act, 8 U.S.C. § 1259, as an alien who entered the United States prior to January 1, 1972. The applicant further seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish that his spouse would face extreme hardship should the waiver be denied. *Decision of the District Director*, dated May 24, 2004. The Application for Waiver of Grounds of Excludability (Form I-601) was accordingly denied.

On appeal, counsel first questions whether an Application for Waiver of Grounds of Excludability is necessary. He contends that the applicant reasonably believed he was a U.S. citizen and therefore is not inadmissible as charged. Counsel further maintains that, if a waiver is required, the applicant has established that his spouse would face extreme hardship should he be denied the waiver.

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 chapter 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 chapter . . . 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 . . . is or was a citizen . . . , the alien permanent 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 . . .

(iii) Waiver authorized.

For provision authorizing waiver of clause (i), see subsection (i) of this section.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

The AAO notes that aliens making false claims to U.S. 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.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)], Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

The record includes a copy of a birth certificate indicating that the applicant was born on August 13, 1960, in Mexico, to [REDACTED] (a Mexican national) and [REDACTED] (a U.S. citizen). The record suggests that the applicant entered the United States as a young child with [REDACTED] and [REDACTED]. In 1976, a Form N-600, Application for Certificate of Citizenship, was filed on the applicant's behalf and indicating that [REDACTED] and [REDACTED] are his parents. The application was deemed abandoned. The applicant claims that he resided with [REDACTED] and [REDACTED] until he was 15 years old. *See* Witness Affidavit signed January 4, 2001. The applicant further claims that his uncle revealed to him, in 1997, that [REDACTED] was not his mother. The record contains an affidavit by [REDACTED]

the applicant's "real" mother, stating that she revealed to him that she was his mother after she entered the United States in 1974 (when he was 13). *See* Affidavit of [REDACTED] dated October 30, 1997. The affidavit further indicates that the applicant's father was [REDACTED] *Id.*

The record contains the applicant's admission that he, until 1997, considered himself to be a U.S. citizen. The applicant further admits that he voted in elections and represented himself as a U.S. citizen for all purposes.

The burden of proof rests entirely upon the applicant to establish that he is admissible to the United States. *See* Section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that the applicant has failed to meet his burden. The AAO notes that the applicant has admitted falsely claiming U.S. citizenship. In this regard, the AAO notes that the applicant is ineligible for the exception stated in section 212(a)(6)(C)(ii)(II) of the Act, because the exception requires that both of the applicant's parents be U.S. citizens. The AAO further notes that there is no waiver available for aliens found inadmissible under section 212(a)(6)(C)(ii) of the Act.¹

The AAO notes the contradictory information provided by the applicant and his relatives with respect to the identity of his parents, and the date when he was informed of his parents' identity. The AAO nevertheless finds that the record is clear that the applicant knew at all relevant times that he was born in Mexico to at least one Mexican parent. The applicant's belief that he may have derived citizenship from his father at birth was unreasonable when taking into account that, since 1974, the applicant has known that [REDACTED] was likely not his father. Moreover, there is no evidence in the record that [REDACTED] previously purported to be the applicant's father, had the required physical presence in the United States prior to the applicant's birth to transmit U.S. citizenship to him. As noted above, in any event, the exception in section 212(a)(6)(C)(ii)(II) requires that both parents be U.S. citizens in addition to a reasonable belief regarding U.S. citizenship.

Having found the applicant to be inadmissible under section 212(a)(6)(C)(ii) of the Act, the AAO need not address the issue of extreme hardship or the applicant's eligibility for a waiver under section 212(i) of the Act. The applicant is ineligible for the exception stated in section 212(a)(6)(C)(ii)(II) of the Act, and a waiver of inadmissibility is not available to the applicant. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹A waiver of inadmissibility is not available for aliens charged with falsely claiming U.S. citizenship after September 30, 1996. The AAO notes that the applicant has admitted making claims to U.S. citizenship at least until 1997.