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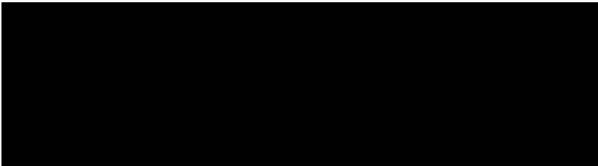
IN RE:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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).

John F. Grissom,
Acting Chief Administrative Appeals Office

DISCUSSION: The Acting District Director, Omaha, Nebraska, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be denied.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under sections 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming United States citizenship, and 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of committing a crime involving moral turpitude.

The applicant sought waivers of inadmissibility pursuant to sections 212(i), 8 U.S.C. § 1182(i), and 212(h), 8 U.S.C. § 1182(h), of the Act. The director concluded that no waiver was available to an alien found inadmissible under section 212(a)(6)(C)(ii) of the Act and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated February 12, 2007. The applicant filed a timely appeal.

On appeal, counsel states that the applicant established extreme hardship to his spouse under section 212(i) of the Act and extreme hardship to his spouse and children under section 212(h) of the Act. Furthermore, counsel contends that the director erred in finding that the applicant made a false claim to United States citizenship, rendering him inadmissible under section 212(a)(6)(C)(ii) of the Act. Counsel states that the applicant's conviction was not for making a false claim to United States citizenship; his conviction involved false information without any reference to a false claim to U.S. citizenship. *Shepard v. United States*, 544 U.S. 13, 125 S. Ct. 1254 (2005), counsel states, establishes what criminal records can be looked to in order to determine the offense of which an alien was convicted. In finding that the applicant made a false claim to United States citizenship, counsel states that the adjudicating officer relied on documentation not in the record of conviction.

The AAO will first address whether the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii).

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.

. . . .

- (iii) Waiver authorized
For provision authorizing waiver of clause (i), see subsection (i) of this section.

The Guilty Plea and Sentencing Order contained in the record shows that in the Iowa District Court of Polk County, on May 30, 2002, the applicant pled guilty to count II, violating Iowa Code § 321.216(A)(4), fraudulent application for non-driver's identification card, on April 18, 2002. The judge, in part, suspended the applicant's sentence of 364 days of incarceration, except for 42 days, and placed him on formal probation for two years.

Iowa Code § 321.216(A)(4) states that it is a serious misdemeanor for a person to "[u]se a false or fictitious name in any application for a driver's license or nonoperator's identification card or to knowingly make a false statement or knowingly conceal a material fact or otherwise commit fraud on an application."

The applicant's adjustment of status application reflects that he was arrested for using false documents on April 18, 2002 in Des Moines, Iowa. During his adjustment of status interview, the applicant admitted to presenting himself as a United States citizen by using a social security card in another person's name and identification with a photograph at the Driver's License Bureau in the Park Fair Mall, in connection with his application for a non-driver's identification card.

Section 212(a)(6)(C)(ii) of the Act was added by section 344(a) of the IRRAIRA and applies only to representations made on or after the date of enactment (September 30, 1996). The statutory provision of section 212(a)(6)(C)(ii) of the Act makes inadmissible "[a]ny 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."

The applicant's false claim to U.S. citizenship falls under section 212(a)(6)(C)(ii) of the Act. He admitted under oath at his adjustment of status interview to making a false claim to U.S. citizenship to the Iowa Department of Transportation, Motor Vehicle Division, Driver's License Bureau in the Park Fair Mall. His false claim was made to obtain a state benefit, a non-driver's identification card, and it was made after September 30, 1996. The statute does not state that the alien must be convicted of making a false claim to citizenship only that the false claim be made to obtain a benefit under any Federal or State law, which is the case here. The applicant is therefore inadmissible under section 212(a)(6)(C)(ii) of the Act for which there is no waiver.

As the applicant has been found inadmissible under section 212(a)(6)(C)(ii) of the Act, no purpose would be served in examining his eligibility for a waiver under section 212(h) of the Act for committing a crime involving moral turpitude.

In proceedings for 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.