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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

H2



FILE:



Office: MEXICO CITY, MEXICO

Date: JUN 11 2009

(CDJ 1992 666 950)

IN RE:



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:



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.

John F. Grissom

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Mexico City, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Acting District Director for continued processing.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant was also found to be inadmissible under sections 212(a)(1)(A)(iii), 212(a)(9)(A), and 212(a)(9)(C) of the Act. The applicant is married to a naturalized United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their U.S. citizen child.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated September 4, 2008.

On appeal, counsel indicates that the applicant is not inadmissible except under section 212(a)(1)(A) of the Act. *Attorney's brief*, dated October 27, 2008.

In support of the waiver, the record includes, but is not limited to, a statement from counsel; statements from the applicant; a statement from the applicant's spouse; a statement from the applicant's mother-in-law; a psychological evaluation of the applicant's spouse; medical statements and records for the applicant; a statement from the applicant's church; a statement from the applicant's friend; statements from the employer of the applicant's spouse; copies of paychecks and Forms W-2 for the applicant's spouse; tax statements for the applicant's spouse; mortgage payments; a bank statement; a car insurance policy; and a property tax bill.

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

- (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 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

Section 212(i) of the Act provides that:

- (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.

Section 212(a)(9)(C)(i) of the Act states, in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

The record reflects that on January 23, 1999 a [REDACTED] attempted to gain admission into the United States by claiming to be a United States citizen at the port of entry in Progreso, Texas. *Criminal Complaint and Conviction, United States District Court, Southern District of Texas, McAllen Division*, dated January 25, 1999; *Form I-867A, Record of Sworn Statement; Form I-213, Record of Deportable/Inadmissible Alien*. [REDACTED] was found to be inadmissible and ordered removed from the United States. *Form I-296, Notice to Alien Ordered Removed/Departed Verification*. He was prohibited from entering, attempting to enter, or being in the United States for a period of five years from the date of his January 25, 1999 departure. *Id.* In March 2006, [REDACTED] entered the United States without inspection. *Record of Sworn Statement*, dated December 6, 2006. The record also notes that [REDACTED] has criminal convictions. *FBI sheet*.

Prior to addressing whether the applicant is eligible for and qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. Counsel asserts that the applicant does not have the criminal convictions as alleged in the Acting District Director's decision, nor has

he ever been removed from the United States. *Attorney's brief.* While the person who made the claim to U.S. citizenship was [REDACTED] the applicant's name is [REDACTED]

[REDACTED] Additionally, one's date of birth appears to be June 6, 1975, while the other's is June 7, 1975. The AAO notes that the record includes photographs of the individual who was ordered removed in 1999 and the individual seeking an immigrant visa. It is unclear that they are photographs of the same person. The AAO observes that the record includes a fingerprint index card dated January 23, 1999 with the fingerprints of the individual who was ordered removed. As such, the AAO remands this matter to the Acting District Director in Mexico City, Mexico to determine through fingerprints or other evidence if the person who was ordered removed is the individual seeking an immigrant visa. If the Acting District Director concludes that the person ordered removed in 1999 is the same person who is currently seeking an immigrant visa, he shall certify his decision to the AAO for adjudication of the appeal.

**ORDER:** The matter will be remanded to the Acting District Director for continued processing.