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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

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U.S. Citizenship
and Immigration
Services

Hr

[REDACTED]

FILE:

[REDACTED]

Office: DETROIT

Date:

JUN 23 2009

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Detroit, Michigan. The matter is now before the Administrative Appeals Office (AAO) on appeal. The acting district director's decision will be withdrawn and the appeal will be dismissed as the underlying application is moot. The matter will be returned to the field office director for continued processing.

The record reflects that 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willfully misrepresenting a material fact to procure an immigration benefit, and section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming U.S. citizenship to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The acting district director found that the applicant "presented false or fraud documents at the time of the arrest on June 19, 1996" and made a false claim to U.S. citizenship to procure employment. The director denied the application accordingly. *Decision of the Acting District Director*, dated February 23, 2007.

On appeal, counsel contends that it is unclear whether the applicant is required to file a waiver at all and states that if she is required to file a waiver, additional evidence would follow. *Notice of Appeal to the Administrative Appeals Office (AAO)*, dated March 27, 2007. Counsel subsequently submitted a psychological report for the applicant's husband, [REDACTED] *Appeal of Denied I-485, Applicant to Adjust Status to Permanent Resident*, dated April 25, 2007.

Section 212(a)(6)(C) of the Act provides:

- (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 chapter (including section 1324a of this title) or any other Federal or State law is inadmissible.

Upon a careful review of the record, the AAO finds that the applicant is *not* inadmissible. In the applicant's affidavit, she claims she did not present any fraudulent documents to border patrol agents on the day of her arrest. The applicant concedes she was working under a fraudulent name, but

claims she “had no documentation in the name of that person in [her] possession at the time” of the arrest. The applicant states she was not trying to defraud the U.S. government of anything, but was “just trying to obtain work.” *Affidavit of* [REDACTED], dated September 9, 2004.

The record supports the applicant’s contention that she did not, in fact, present fraudulent documents to border patrol agents at the time of her arrest or make a claim to U.S. citizenship. According to the Record or Deportable Alien (Form I-213) in the record, the applicant “is a native and citizen of Mexico making no claim to USC., LAPR., or Amnesty.” The Form I-213 indicates that while the applicant presented fraudulent documents at the time of hire, she did not have them in possession at the time of her arrest. Based on this information, the AAO finds that the acting district director erred in finding that the applicant presented fraudulent documents during her arrest.

In addition, the AAO finds that the applicant is not inadmissible for making a false claim to U.S. citizenship to procure an immigration benefit. 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. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant’s position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

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 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. In this case, the applicant’s claim to false citizenship was made prior to September 30, 1996, and was made in order to procure employment. Using fraudulent identification to procure employment is not a benefit under the Act. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 571 (BIA 1999) (Schmidt and Villageliu, concurring) (“working in the United States is not ‘a benefit provided under this Act’”). Accordingly, the applicant is not inadmissible to the United States pursuant to either section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willfully misrepresenting a material fact to procure an immigration benefit, or section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming U.S. citizenship to procure an immigration benefit.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.