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U.S. Citizenship
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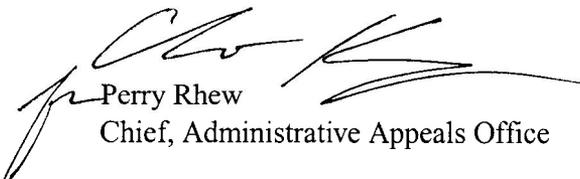
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B), 1182(i)

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.

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Trinidad and Tobago who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii)(I), for falsely representing himself to be a citizen of the United States in attempt to procure admission; under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation,¹ and; under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure.² He seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(i) and 1182(a)(9)(B), in order to reside in the United States with his U.S. citizen wife.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated November 14, 2006.

On appeal, counsel for the applicant contends that the applicant's record of conviction does not support the determination that he made a false claim to U.S. citizenship. *Statement from Counsel on Form I-290B*, dated December 12, 2006. Counsel asserts that the applicant's wife will suffer extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel*, submitted December 12, 2006.

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

Misrepresentation

(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.

¹ The applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act due to the fact that on November 2, 2005 he willfully misrepresented his nationality (false claim to U.S. citizenship) in order to attempt to procure admission into the United States. As discussed below, his false claim to U.S. citizenship also rendered him inadmissible under section 212(a)(6)(C)(ii)(I) of the Act.

² The district director indicated that the applicant was ordered removed in 2003 yet he did not depart until he entered Mexico in 2005. Thus, the district director found that the applicant accrued over one year of unlawful presence. The applicant now seeks readmission as an immigrant, thus he was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure.

(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 . . . is inadmissible.

....

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

Section 212(i) of the Act provides, in pertinent part:

- (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 immigrant 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 record reflects that on February 24, 1994 the applicant obtained conditional permanent residence based on an approved Form I-130, Petition for Alien Relative, filed by his former wife. His conditional permanent residence was terminated on February 24, 1996 because he and his former wife failed to jointly petition for removal of the conditions. On February 3, 1999 a Notice to Appear was issued to the applicant ordering him to appear before an Immigration Judge in Newark, New Jersey. On September 13, 1999 the Immigration Judge granted the applicant voluntary departure until October 13, 1999. The applicant filed an appeal before the Board of Immigration Appeals, which was dismissed on April 3, 2003. The applicant filed a motion to reopen the appeal, yet it was denied on August 15, 2003. The applicant's present wife filed a Form I-130, Petition for Alien Relative, on the applicant's behalf which was approved on July 14, 2005.

The record further reflects that on November 2, 2005, the applicant applied for admission into the United States from Mexico at Laredo, Texas. *Form I-213, Withdrawal of Application for Admission/Consular Notification*, dated November 2, 2005. During initial inspection an immigration officer inquired about his citizenship. *Id.* at 1. The applicant presented a New Jersey commercial driver's license and stated that he was a U.S. citizen. *Id.*

As a result of this incident, a criminal complaint was filed against the applicant for violation of 8 U.S.C. § 1325(a)(3) because he “knowingly, willfully and in violation of law attempted to gain illegal entry into the United States by willful concealment of a material fact.” *Criminal Complaint*, dated November 8, 2005. The complaint indicates that the applicant “attempted to enter the United States through the Pharr Port of Entry by claiming to be a citizen of the United States.” *Id.* at 1. The judgment for the charge reflects that the applicant “entered a plea of guilty to the offense of attempting to gain illegal entry to the United States by willful concealment of a material fact, in violation of Title 8, United States Code, Section 1325(a)(3), as charged in the Complaint” *Judgment from the United States District Court for the Southern District of Texas*, dated November 16, 2005.

Thus, the record clearly shows that the applicant claimed that he was a United States citizen for the purpose of gaining admission. Counsel’s contention that there is not sufficient evidence to show that the applicant made a false claim of U.S. citizenship is not persuasive. Based on the foregoing, the applicant is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act.

Individuals 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; Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) § 344(c), Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996).** Therefore, the applicant is not eligible for a waiver of his inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act. As the applicant may not obtain a waiver of his inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act, no purpose is served in adjudicating his request for waivers of his inadmissibility under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act.

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.