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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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: OCT 09 2009

IN RE: [redacted]

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:

[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.

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, 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, Baltimore, Maryland, 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 has resided in the United States since January 1998, when she entered the country without inspection. She 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 sought to procure an immigration benefit through fraud or misrepresentation of a material fact and section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. 1182(a)(6)(C)(ii), for having made a false claim of U.S. citizenship in order to gain entry into the United States. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her spouse.

The district director concluded that the applicant was statutorily ineligible for a waiver of grounds of inadmissibility because she is inadmissible under section 212(a)(6)(C)(ii) of the Act and there is no waiver for this ground of inadmissibility. The application was denied accordingly. *See Decision of the District Director* dated June 18, 2007.

On appeal, counsel asserts that the applicant was not asked during her interview for adjustment of status whether she had ever been arrested cited, or charged with violating any laws and was not asked whether she was under a final order of civil penalty for using fraudulent documents as the decision of the district director states.

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 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.

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

Section 212(i) of the Act provides:

> **(ii)** The [Secretary] may, in the discretion of the [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 [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 applicant attempted to enter the United States on December 31, 1997 by presenting a U.S birth certificate in the name of and falsely claiming to be a U.S. Citizen. She was found to be inadmissible under section 212(a)(6)(C)(ii) of the Act and was removed from the United States on the same day. *See Form I-860, Notice and Order of Expedited Removal and Form I-296, Departure Verification.* The applicant admitted to her use of the birth certificate in a sworn statement conducted in Spanish and signed by the applicant. *See Form I-687A Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act*, dated December 31, 1997. There is no waiver available for this ground of inadmissibility.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established eligibility for a waiver under section 212(i) of the Act or whether she would merit the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden.

ORDER: The appeal is dismissed.