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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: SAN FRANCISCO

Date:

OCT 20 2009

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.

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).

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], 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). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the applicant's right of equal protection was violated by the differing statutory requirements for waivers under different sections of the Immigration and Nationality Act. Counsel states that the differing requirements results in treating similarly situated aliens differently without a rational basis. Counsel states that Congress' attempt to reduce the instances of marriage fraud is not a rational explanation in light of the long history of immigration law and precedent that tends to weigh against it. Counsel states that the Service should re-open the applicant's adjustment case without a need for a waiver. Counsel states that in the alternative, the applicant asks that his waiver application be granted based on the hardship the applicant's minor U.S. citizen children will suffer if the applicant is not allowed to adjust.

In support of the waiver application, the record contains photographs, statements from the applicant and his children, and the applicant's children's school records. The entire record was reviewed and considered in rendering this decision.

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.

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.

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are inadmissible under section 212(a)(6)(C)(ii) of the Act. There is no waiver available for this ground of inadmissibility for intending immigrants. Section 344(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) created section 212(a)(6)(C)(ii) of the Act. Section 212(a)(6)(C)(ii) of the Act became effective on September 30, 1996. It applies only to false claims to U.S. citizenship made on or after September 30, 1996.

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 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 6, 1998.

A Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints reveals that on December 15, 1972, the applicant was apprehended by the Immigration and Naturalization Service in El Centro, California and charged with *False Claim to U.S. Citizenship*. The applicant corroborated this arrest in a sworn statement taken during his adjustment of status (Form I-485) interview. The sworn statement provides that in 1973 the applicant attempted to enter the United States with a Certificate of Citizenship that did not belong to him, and he was detained for 120 days.

The applicant's false claim to U.S. citizenship, which occurred prior to September 30, 1996, was made to a U.S. Government official to gain admission into the United States. Thus, the district director was correct in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

Counsel asserts that the applicant is eligible for a waiver of inadmissibility based on hardship to the applicant's children. Waivers under section 212(i) of the Act are only available to immigrants who are the spouse, son, or daughter of a U.S. citizen or lawful permanent resident. The applicant has provided no evidence of his parents' or spouse's immigration status, and thus, their eligibility to be considered qualifying relatives under section 212(i) of the Act has not been established. Children are not considered qualifying relatives for waivers under section 212(i) of the Act. Therefore, the applicant has not established that he is eligible to apply for a waiver of inadmissibility.

Finally, the AAO notes that constitutional issues are not within the appellate jurisdiction of the AAO. The AAO has no jurisdiction to consider counsel's claim that the provisions of immigration law, which restrict the applicant's eligibility for a waiver, violate the applicant's constitutional right to equal protection. The jurisdiction of the AAO is limited to that authority specifically delegated by

the immigration regulations at 8 C.F.R. 103.1. Counsel's assertion regarding a violation of the applicant's constitutional rights will therefore not be addressed in this decision.

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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.