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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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DATE: **AUG 14 2012** OFFICE: GUATEMALA CITY

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew, Chief
Administrative Appeals Office

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

The applicant, a native and citizen of Belize was found inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II) for possession of a controlled substance. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), based on extreme hardship to his U.S. citizen spouse.

On December 9, 2011, the Field Office Director concluded that the applicant did not establish extreme hardship to his U.S. citizen spouse.

On appeal, the applicant states that his U.S. citizen spouse is pregnant and will suffer extreme hardship as a result of his inadmissibility.

In support of the application, the record includes, but is not limited to statements from the applicant, financial and medical documentation concerning the applicant's spouse, biographical information for the applicant and his spouse, photographs of the applicant and his spouse, and documentation relating to the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

After the submission of the applicant's appeal, he was found to be inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act for having made a false claim of U.S. citizenship in order to gain entry into the United States.

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

(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.

(II) Exception-

In the case of an alien making a representation described in subclause (I), if each natural parent of the alien ... is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

The record makes clear that the applicant attempted to gain admission to the United States on August 2, 2012 at the San Ysidro Port of Entry in California by stating that he was a U.S. citizen by birth in New York. The applicant was sent to secondary inspection where he then stated under oath that he was not born in New York, was a native of Belize, and that he presented himself as a U.S. citizen in order to gain admission to the United States. He was found to be inadmissible under sections 212(a)(6)(C)(ii) and 212(a)(7)(A)(i)(I) of the Act and was ordered removed.¹ As a result, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act as an alien who has falsely represented himself to be a citizen of the United States to gain admission to the United States. There is no waiver available for inadmissibility under 212(a)(6)(C)(ii)(I) of the Act and the record does not illustrate that the applicant is eligible for the exception at section 212(a)(6)(C)(ii)(II) of the Act.

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

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.

¹ As a result of the applicant's expedited removal order he is also now inadmissible under section 212(a)(9)(A)(i) of the Act.