

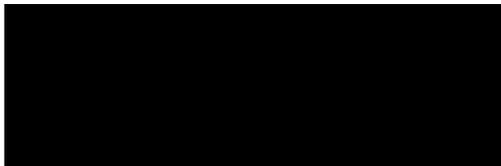
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FILE:



Office: MANILA SUB-OFFICE

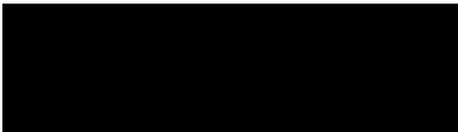
Date: FEB 26 2007

IN RE:



PETITION: 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) and 1182(i)

ON BEHALF OF PETITIONER:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer-In-Charge, Manila, denied the waiver application and certified the decision to the Administrative Appeals Office (AAO.) The officer-in-charge's decision will be affirmed and the application denied.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. Additionally, the record reflects that the applicant is 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 claiming to be a citizen of the United States in attempt to procure a benefit under the Act. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with his U.S. citizen wife.

The officer-in-charge found that the applicant established that his wife would experience extreme hardship should he be prohibited from entering the United States. However, the officer-in-charge denied the application based on discretion, due to finding that the applicant violated U.S. immigration laws over a long duration to remain in the United States, including a false claim to U.S. citizenship. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated May 22, 2006.

On appeal, counsel for the applicant asserts that the favorable factors outweigh the unfavorable factors in the present matter, and thus the officer-in-charge should afford the applicant a favorable exercise of discretion. *Brief in Support of Appeal*, filed June 21, 2006. Counsel contends that the officer-in-charge's "reference to an alleged claim to derivative American citizenship is . . . irrelevant to the instant consideration." *Id.* at 3.

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 . . . is inadmissible.

.....

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

Section 212(i) of the Act provides:

- (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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Upon review, it is observed that the officer-in-charge denied the present application based on a finding that the applicant failed to show that he warrants a favorable exercise of discretion under section 212(a)(9)(B) of the Act. However, of primary concern is the fact that the record shows that the applicant made a false claim to U.S. citizenship for the purpose of obtaining a benefit under the Act. Thus, as he is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act. There is no provision for a waiver of the applicant's inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act, as discussed below.

The applicant entered the United States in C-1 status on December 20, 1991. The applicant stated that "[his] friend contact[ed] his friend in California and refer[red] [the applicant] to a lawyer who [could] help [him] to [sic]

get a working permit by applying for political asylum even though the story is [sic] not true.” *Statement from Applicant in Support of Waiver Application*. He filed a Form I-589, Request for Asylum in the United States, dated October 5, 1992. On June 26, 1995, an immigration judge denied the application for asylum and granted the applicant voluntary departure. In October 1995, the applicant appealed the denial to the Board of Immigration Appeals (BIA), yet the appeal was denied. A Warrant of Deportation was issued for the applicant on November 10, 1996.

On March 5, 1997, the applicant filed a motion to reopen proceedings before the BIA, claiming ineffective assistance of his former counsel, and asserting that he is a “natural-born United States citizen by descent.” *Motion to Reopen and Change Venue*, dated March 5, 1997. The applicant included a sworn statement, in pertinent part, as follows:

I, ALEX DE LEON ENCABO, unto this Honorable Court, hereby declare under penalty of perjury:

1. That I am a United States citizen by descent;
2. That my father and mother are American citizens by birth;
3. That I am not an alien in the United States

In reference to his prior claim to U.S. citizenship, in the present proceeding the applicant stated that “I gave money [to] the lawyer to open my case again claiming that I am a son of [an] American citizen by blood, by believing on [sic] the lawyer I continue[d] [to] give money that it ended up being denied again and loosing [sic] hope to stay in America.” *Statement from Applicant in Support of Waiver Application*.

The record contains numerous documents that reflect that the applicant’s parents are citizens of the Philippines. The applicant’s marriage certificate states that both of his parents were born in the Philippines. The applicant submitted two birth certificates for himself, both of which state that his parents are citizens of the Philippines. The record contains three separate Forms G-325A for the applicant, on each of which he indicated that his parents were born in the Philippines, and they reside there presently. The applicant indicated that he is a citizen of the Philippines in all other forms and statements he has made to U.S. immigration officials, including his Form I-589 application for asylum, his Form I-485 application to register his status as a permanent resident, and his Form I-765 application for work authorization. Other than the applicant’s statements in connection with his motion to reopen before the BIA, the record contains no evidence to support that he is a U.S. citizen.

Accordingly, the record reflects by a preponderance that the applicant made a false claim of U.S. citizenship before the BIA for the purpose of forestalling his deportation. Thus, the applicant falsely represented himself to be a citizen of the United States for a purpose or benefit under this Act, as contemplated by section 212(a)(6)(C)(ii)(I) of the Act.

The officer-in-charge raised this matter in his denial and certification to the AAO. However, counsel responded to the officer-in-charge’s concern by stating that the officer-in-charge’s “reference to an alleged claim to derivative American citizenship is . . . irrelevant to the instant consideration.” *Brief in Support of Appeal* at 3.

Accordingly, though the applicant has been given the opportunity to respond, he has not addressed whether he made a false claim to U.S. citizenship. Based on the foregoing, the AAO finds that the applicant is inadmissible for making a false claim to U.S. citizenship in his motion before the BIA on March 5, 1997. Section 212(a)(6)(C)(ii)(I) of the Act.

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.

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. Therefore, the district director correctly found that the applicant is not eligible for a waiver pursuant to section 212(i) of the Act.

As the applicant made a false claim to U.S. citizenship after September 30, 1996, he is not eligible for waiver of this ground of inadmissibility. For this reason, his Form I-601 application may not be approved and he remains inadmissible to the United States.

As the applicant is not eligible for a waiver of inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act, the AAO need not address whether the applicant warrants a favorable exercise of discretion pursuant to his application for a waiver under section 212(a)(9)(B) of the Act.

ORDER: The decision of the district director is affirmed.