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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

#3



FILE: [REDACTED] Office: SEOUL, KOREA Date: NOV 25 2008

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

A handwritten signature in cursive script that reads "Michael Shumway".

for

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Seoul, Korea, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 will be denied.

The applicant is a native and citizen of Japan 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). The applicant seeks a waiver of her ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The officer in charge determined the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were refused admission into the United States. The applicant's Form I-601 application was denied accordingly.

On appeal the applicant asserts that the evidence in the record establishes her U.S. citizen husband will suffer extreme hardship if she is denied admission into the United States.

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

[A]ny 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.

The record reflects that the applicant was unlawfully present in the United States between 1996 and October 1999, at which time she departed the country. Regarding unlawful presence under section 212(a)(9)(B)(i) of the Act, the Board of Immigration Appeals (Board) has determined the following:

[D]eparture from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) . . . if that departure was preceded by a period of unlawful presence of at least 1 year. . . . [T]he departure which triggers inadmissibility . . . must fall at the end of a qualifying period of unlawful presence. . . . An alien unlawfully present for 1 year or more who voluntarily departs is barred from admission for 10 years. *In re Rodarte-Roman*, 23 I&N Dec. 905, 908 (BIA 2006).

The applicant was unlawfully present in the United States for more than one year between April 1, 1997 (the date section 212(a)(9)(B)(i) of the Act provisions went into effect) and sometime in October 1999. She is seeking admission less than ten years after her departure from the United States. The applicant is therefore subject to section 212(a)(9)(B)(i)(II) of the Act.

The unlawful presence inadmissibility provisions of section 212(a)(9)(B)(v) of the Act provide that:

[T]he Attorney General [now Secretary, Department of Homeland Security, "Secretary"] has sole discretion to waive clause [212(a)(9)(B)](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.

The applicant married a U.S. citizen in August 2003. The applicant's husband is therefore a qualifying family member for section 212(a)(9)(B)(v) of the Act waiver of inadmissibility purposes.

The AAO notes, however, that evidence in the record also indicates that in August 2005, the applicant attempted to enter the United States by falsely claiming to be a U.S. citizen. Section 212(a)(6)(C)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii)(I), effective as of September 30, 1996, provides in pertinent part that:

[A]ny 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.

Evidence in the record relating to the applicant's false claim to U.S. citizenship claim consists of the following:

Form I-160A, Notice of Refusal of Admission/Parole into the United States prepared by the U.S. Customs Border Patrol (CBP). The Form I-160A states under "reasons for excludability or parole" that the applicant applied for admission into the United States at Champlain, New York on August 28, 2005, and that she falsely claimed U.S. citizenship in an attempt to facilitate her admission into the U.S. The Form I-160A indicates that a search of the applicant's car revealed documents reflecting that the applicant had been denied an immigrant visa, and informing her that she was required to file a Form I-601, Waiver of Inadmissibility to overcome a section 212(a)(9) of the Act ground of inadmissibility. An April 15, 2005 USCIS letter further informed the applicant that the evidence submitted with her Form I-601 was insufficient to warrant favorable action, and provided her with an additional 90 days to submit evidence of extreme hardship. Criminal prosecution was not pursued, and the applicant was allowed to return to Canada.

An August 28, 2005 CBP Memorandum reflecting that the applicant attempted to enter the U.S. by car with her U.S. citizen husband and son and another family member. The memorandum reflects that the applicant and her husband admitted to having made false and misleading statements during CBP inspection, and that they stated their intent was to bring their son to New Jersey to start school, and then for the applicant to depart again after a month to wait for her immigrant visa to be processed.

An August 28, 2005 CBP Memorandum detailing all of the above information, and stating that the applicant and the other car occupants claimed initially that the purpose of their trip to Canada was to vacation. When asked about her citizenship, the applicant stated that she was a U.S. citizen, that she had a U.S. naturalization certificate, and that she had lived in the U.S. on and off for the past 15 years. The applicant was referred for further inspection due to lack of proof of naturalization, at which point the CBP officers discovered that the applicant held a Japanese passport containing evidence that she was in the process of applying for a U.S. visa. A vehicle search revealed other documents hidden in video boxes in the passenger seat, including airplane tickets reflecting the applicant's arrival in Canada from Japan a day earlier,

and documents reflecting that the applicant was found to be inadmissible to the United States and that she was required to file a Form I-601 waiver of inadmissibility.

Copies of all of the documents referred to in the above forms and memoranda.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The evidence in the record reflects that the applicant attempted to enter the United States on August 28, 2005, by falsely claiming that she was a U.S. citizen. Accordingly the applicant is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act. No waiver of inadmissibility exists for this ground of inadmissibility. Because the applicant is statutorily ineligible for a waiver of inadmissibility, no purpose would be served in adjudicating the merits of her waiver of inadmissibility claim under section 212(a)(9)(B)(v) of the Act. The appeal will therefore be dismissed, and the Form I-601 will be denied.

ORDER: The appeal is dismissed. The application is denied.