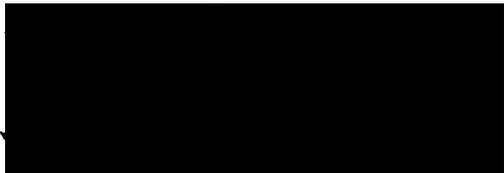


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**U.S. Citizenship
and Immigration
Services**

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FILE:  Office: CALIFORNIA SERVICE CENTER Date: *AUG 05 2005*

IN RE: Applicant: 

APPLICATION: Application for Permission to Reapply for Admission after Removal into the United States after Deportation under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, California Service Center 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 on August 19, 2001, at the Calexico, California Port of Entry represented himself to be a citizen of the United States in order to gain admission into the United States. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), as an alien who falsely represents himself to be a citizen of the United States for any purpose or benefit under the Act. Consequently, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record reflects that the applicant reentered the United States on an unknown date without a lawful admission or parole and without permission to reapply for admission in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). On July 2, 2002, the applicant appeared at the San Bernardino, California Citizenship and Immigration Services (CIS) office. On the same day a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), and the applicant was removed to Mexico on July 3, 2002. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. He is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to travel to the United States to reside with his U.S. citizen spouse and children.

The Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *See Director's Decision* dated October 11, 2004.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

On appeal, counsel submits a brief, copies of the applicant's children's birth certificates, a copy of his marriage certificate, school progress reports for the applicant's children's, tax returns, a car contract, documents regarding health insurance and bank accounts, a letter from the applicant's church, and family

pictures. Counsel states that the Service erroneously denied the Form I-212 because it did not consider the applicants's favorable factors such as his numerous family ties, education, children's education, strong history of gainful employment, property ties, health insurance, community service and the fact that the applicant has never been arrested or convicted of a crime.

In his brief counsel states that the applicant left the United States in order to attend to his gravely ill parents and he would have never been deported from the United States if he had never left. In addition counsel states that although the applicant is aware that he was expeditiously removed from the United States on August 19, 2001, he has never been arrested or convicted of a crime and has continuously shown good moral character. Furthermore counsel states that the applicant and his spouse have strong family ties to individuals in the United States who would suffer extreme hardship if the applicant were not permitted to live in the United States. The applicant has four U.S. citizen children and the applicant's spouse's extended family lives in the United States. Counsel states that the applicant has been gainfully employed and has filed income taxes. According to counsel the favorable factors outweigh his violation of immigration laws by attempting to enter the United States by misrepresenting his immigration status, and requests a favorable exercise of discretion.

On appeal counsel erroneously states that the applicant submitted a Form I-212 pursuant to section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B). Section 212(a)(6)(B) of the Act refers to individuals who fail to attend removal proceedings. The applicant in the present case was expeditiously removed from the United States pursuant to section 212(a)(6)(C) of the Act and not 212(a)(a)(6)(B) of the Act as stated by counsel.

The record of proceedings clearly reflects that on August 18, 2001, the applicant presented a U.S. birth certificate that did not belong to him, to an Immigration Inspector in an attempt to gain admission into the United States. By submitting a U.S. birth certificate to an Immigration Inspector, when applying for admission to the United States, the applicant falsely represented himself to be a U.S. citizen. A false representation of U.S. citizenship may be either an oral representation or one supported by an authentic or fraudulent document. In the present case the applicant attempted to use a United States birth certificate in order to gain admission into the United States as a U.S. citizen. Based on the above facts the AAO finds that the applicant is clearly inadmissible under section 212(a)(6)(C)(ii) of the Act.

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

(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 (or, in the case of an adopted alien, each adoptive 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 applicant in the instant case does not qualify for the exception under section 212(a)(6)(C)(ii)(II) of the Act, and there is no waiver available under section 212(a)(6)(C)(ii) of the Act.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

Notwithstanding the arguments on appeal, the applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act, which are very specific and applicable. No waiver of the ground of inadmissibility under section 212(a)(6)(C)(ii) of the Act is available to an alien who made a false claim to United States citizenship. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.