

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H4

PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 21 2006**

IN RE:

[Redacted]

APPLICATION:

Application for Permission to Reapply for Admission into the United States after
Deportation or Removal 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:

[Redacted]

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it 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 February 21, 2000, applied for admission to the United States at the San Ysidro, California, Port of Entry. She made a false oral claim to U.S. citizenship. She 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), for attempting to procure admission into the United States by making a false claim to U.S. citizenship. On February 22, 2000, she 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, in March 2000, the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission. On March 28, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Worker (Form I-140) filed on behalf of her spouse. On November 10, 2004, the applicant's spouse became a lawful permanent resident. Subsequently, four of the applicant's children became lawful permanent residents. On January 26, 2005, the applicant filed the Form I-212. The applicant is inadmissible under sections 212(a)(9)(A)(i) and 212(a)(9)(C)(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(A)(i) and 1182(a)(9)(C)(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 remain in the United States and reside with her lawful permanent resident spouse and children.

The director determined that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i) of the Act for reentering the United States after having been removed. The director also found that the applicant was inadmissible for making a false claim to U.S. citizenship for which there is no waiver available. The director found that since the applicant was mandatorily inadmissible no purpose would be served in adjudicating the Form I-212. The director denied the Form I-212 accordingly. *See Director's Decision* dated September 17, 2005.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act because she did not knowingly misrepresent herself to be a U.S. citizen and is entitled to an adjudication of the Form I-212 because she is eligible under section 245(i) of the Act. *See Applicant's Brief*, dated March 29, 2005. In support of her contentions, counsel submits the above-referenced brief and an affidavit from the applicant. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) 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.
- (ii) Other aliens.-Any alien not described in clause (i) who-

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case on a 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 Secretary has consented to the alien's reapplying for admission.

....

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

Section 212(a)(6)(C)(ii) 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 . . . is inadmissible.

II. Exception-

In the case of an alien making a representation described in subclause (I), if each natural parents 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.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. Aliens making false claims to U.S. citizenship on or after September 30, 1996 are statutorily ineligible for a waiver of inadmissibility. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(ii) and 1182 (a)(6)(C)(iii). Therefore, if an alien makes a false claim to U.S. citizenship on or after September 30, 1996, the alien is subject to a permanent ground of inadmissibility.

Counsel and the applicant, in her affidavit, contend that she did not knowingly or willfully misrepresent herself to be a U.S. citizen when she sought admission to the United States in 2000. In her affidavit, the applicant states that she spoke no English and that she was unaware of the questions being asked of her during her application for admission to the United States in 2000 or what was contained in documents she signed. Counsel assertions are unpersuasive. The record in the instant case reflects that the applicant was questioned in the Spanish language when she attempted to enter the United States by orally making a false claim to U.S. citizenship. The record also reflects that the applicant claimed to have been born in San Diego, California. The Record of Sworn Statement in Proceedings (Form I-867B) indicates that, after being placed in secondary inspection, the applicant admitted that she was not a U.S. citizen and that when she presented herself for inspection she did not present any documents but stated “U.S.” when questioned by the inspections officer as to how she attempted to procure admission to the United States. The record reflects that the applicant was not under the misconception that she was a U.S. citizen at the time she made the false claim to U.S. citizenship and that both of her parents were citizens of Mexico. The AAO notes that, when questioned a the time of her attempted entry in 2000, the applicant provided information that conflicts with the information provided on the Biographical Information Form (G-325) in regard to her name, date of birth, residence in Mexico and

names of her spouse and parents. The AAO finds that the applicant is ineligible for the exception to the inadmissibility grounds for falsely representing that she was a U.S. citizen.

The AAO therefore finds that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act and that there is no waiver available to the applicant under this ground of inadmissibility. *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. Counsel contends that the Ninth Circuit Court of Appeals' (Ninth Circuit) holding in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004), conflicts with *Matter of Martinez-Torres* and that the applicant is legally eligible to apply for the Form I-212 under Ninth Circuit case law. *Perez-Gonzalez* presented for decision the issue of the proper scope of section 241(a)(5) of the Act, which provides that an alien who is subject to a reinstated removal order is not eligible for any relief from removal. Before the United States Immigration and Customs Enforcement (USICE) had reinstated the removal order, the alien in *Perez-Gonzalez* had filed a Form I-212, seeking consent to reapply. Noting that 8 CFR 212.2(e) and (i)(2) allow for "nunc pro tunc" filing of a Form I-212 together with an adjustment application, the court held that USICE could not execute a reinstated removal order so long as the United States Citizenship and Immigration Services (USCIS) had not adjudicated the Form I-212 and the related Form I-485. 379 F.3d at 788. *Perez-Gonzalez* does not support counsel's contention. Finally, counsel contends that the applicant's case is distinguishable from *Matter of Martinez-Torres* because the applicant is not an alien that is mandatorily inadmissible because of a criminal conviction. However, the applicant is mandatorily inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act for making a false claim to citizenship.

The applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act, which are very specific and applicable. 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. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed.

ORDER: The appeal is dismissed.