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

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[Redacted]

FILE: [Redacted] Office: PHOENIX, AZ

Date: DEC 27 2006

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(6)(C) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(a)(6)(C)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Phoenix, Arizona denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the decision of the district director will be withdrawn, and the waiver application will be declared moot.

The applicant, [REDACTED] (Mr. [REDACTED]), is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(C)(6)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(C)(6)(i), for presenting a fraudulent U.S. naturalization certificate in order to stay and work in the United States. Mr. [REDACTED] seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States with his U.S. citizen (USC) wife, [REDACTED] (Mrs. [REDACTED]) and their USC child.

The record reflects that on January 29, 1991, the Border Patrol arrested Mr. [REDACTED] at a workplace raid in Yuma, Arizona. When asked what his immigration status was, Mr. [REDACTED] presented a fake social security card and said his "mica," or alien registration card was at home. When the Border Patrol agents reviewed Mr. [REDACTED] Form I-9, Employment Eligibility Verification on file with his employer, they saw that Mr. [REDACTED] had presented a false naturalization certificate to the employer as proof of eligibility for work. The district director found Mr. [REDACTED] inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(C)(6)(i), for "knowingly and willfully present[ing] a fraudulent certificate of naturalization as evidence of stay and to obtain employment in the United States." *Decision of the district director, dated May 10, 2005.* The district director further concluded that Mr. [REDACTED] had failed to establish that extreme hardship would be imposed on his qualifying relative, and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Id.*

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

- (i) In general.—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 (including section 274A) or any other Federal or State law is inadmissible.
- (iii) Waiver authorized.—For provision authorizing waiver of clause (i), see subsection (i).

The Illegal Immigration and Immigrant Responsibility Act 1996 (IIRIRA) created section 212(a)(6)(C)(ii) to render inadmissible any alien who falsely claims to be a U.S. citizen for any purpose or benefit under the Act, including situations where this claim is made to obtain work from a private employer. There is no waiver available for violation of section 212(a)(6)(C)(ii). This section of the Act only applies to false claims to citizenship made on or after September 30, 1996. An Immigration and Naturalization Service (Service) Memorandum dated April 8, 1998, provides guidance on situations relating to false claims to U.S. citizenship:

Prior to the enactment of IIRIRA, a false claim to U.S. citizenship was grounds for finding an alien inadmissible under section 212(a)(6)(C)(i) of the Act relating to fraud or willful misrepresentation of a material fact in certain cases. The fraud or material misrepresentation, however, must have been made to procure a specific benefit under the Act, such as a visa, admission, or immigration documents (i.e. a U.S. passport). The fraud or material misrepresentation must also have been made to a U.S. government official.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service.

The Memorandum then states that:

In considering a case where a false claim to citizenship has been made, Service officers should review the information on the alien to determine whether the false claim to citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service 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.

As the acts in question occurred in 1991, they will be analyzed as a false claim to citizenship prior to September 30, 1996. When first confronted by the Border Patrol at work, Mr. ██████ held himself out to be a lawful permanent resident by presenting a false social security card and stating that his alien registration card was at home. *See Record of Sworn Statement to the Immigration and Naturalization Service, dated January 29, 1991.* Subsequently, Mr. ██████ admitted to the Border Patrol agents that he entered the United States without inspection in December 1989 and that he later he paid for a fake U.S. naturalization certificate and social security number and that he used these to obtain work. *Id.*

The only time Mr. ██████ made a false claim to citizenship was when he presented his false U.S. naturalization certificate and social security number to his employer. He made the false claim to citizenship to obtain work after he had entered the United States, not to procure a visa, other documentation, or admission into the United States. In addition, although Mr. ██████ held himself out as a U.S. citizen, he did so to his private employer, not a government official. The AAO notes that Mr. ██████ did not misrepresent himself as a U.S. citizen to the Border Patrol agents. (Initially, he told them ██████ full permanent resident and later admitted he was undocumented). In addition, although these agents were government officials, Mr. ██████ did not misrepresent himself to them in order to procure a visa, other documentation, or admission into the United States (he was already in the United States).

His acts are not, therefore, grounds for inadmissibility under section 212(a)(6)(C)(i) of the Act. The BIA has ruled that "working in the United States is not 'a benefit provided under this Act,'" and that the use or possession of a fraudulent document is not the equivalent of fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act. *See Cervantes-Gonzalez, supra* at 571 (Villageliu and Schmidt, JJ., concurring) (clarifying that the benefit sought by the respondent was the right to travel with a U.S. passport and that the decision of the majority "may be misinterpreted as suggesting that using the fraudulent passport to obtain employment is obtaining a benefit under the Act"). In his concurring opinion, Judge Villageliu adds, "It is long settled that inadmissibility for immigration fraud does not ensue from the mere purchase of fraudulent documents, absent an attempt to fraudulently use the document for immigration purposes." *Id., citing Matter*

of Kai Hing Hui, 15 I&N Dec. 288 (BIA 1975); *Matter of Sarkissian*, 10 I&N Dec. 109 (BIA 1962); *Matter of Box* 10 I&N Dec. 87 (BIA 1962); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992).

Mr. [REDACTED] acts, though unlawful, were not for the purpose of procuring "a visa, other documentation, or admission into the United States or other benefit provided under the Act." Section 212(a)(6)(C)(i). As Mr. [REDACTED] is not inadmissible under section 212(a)(6)(C)(i), a waiver of this ground of inadmissibility is not required.

ORDER: The appeal is dismissed, as the waiver application is moot.