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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: CALIFORNIA SERVICE CENTER Date: JAN 29 2007

IN RE: Applicant: [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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) 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 February 14, 1998, at the San Ysidro, California, Port of Entry, orally represented herself 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 herself to be a citizen of the United States for any purpose or benefit under the Act, and section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(7)(A)(i)(I), for being an immigrant not in possession of a valid immigrant visa or other valid entry document. Consequently, on February 16, 1998, 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, but prior to November 22, 1998, the date she gave birth to a child, 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). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). She 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 U.S. citizen spouse and child.

The Director determined that the applicant was inadmissible under section 212(a)(6)(C)(ii) of the Act, and not eligible for any exception or waiver. In addition, the Director determined that the applicant was inadmissible pursuant to section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182 (a)(6)(A)(i) for being present in the United States without being admitted or paroled and section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for having been unlawfully present in the United States after a previous immigration violation. Finally, the Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The Director then denied the Form I-212 accordingly. *See Director's Decision* dated January 27, 2006.

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 the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has; (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others; (2) has added a bar to admissibility for aliens who are unlawfully present in the United States; (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal, counsel submits a brief in which he states that pursuant to the temporary restraining order in *Duran-Gonzalez v. DHS*, C-06-1411 (W. Dist. Wash.) Citizenship and Immigration Services (CIS) may not deny a Form I-212 pending in the Ninth Circuit's jurisdiction, until the litigation is settled or a final judgment is rendered. In addition, counsel states that the applicant is eligible to adjust her status under section 245(i) of the Act based on an approved Form I-130. Additionally, counsel states that the decision in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004) prohibits CIS from reinstating a previous removal order of an individual who is eligible for adjustment of status under section 245(i) of the Act. Counsel further states that *Perez-Gonzalez* renders an applicant eligible for section 245(i) of the Act free from the shackles of inadmissibility created by section 212 of the Act, relating to "entrants without inspection." According to counsel, the applicant's unlawful entries cannot be used as a bar to her admissibility in connection with her adjustment of status case. Furthermore, counsel states that the applicant's alleged false claim to U.S. citizenship was not willful. Counsel states that the applicant did not speak or understand English when she merely pronounced the phrase "U.S. citizen" without knowing what it meant, or that it would amount to inadmissibility to the United States for life. Counsel refers to the decision in *U.S. v. Karaouni* 03-10327 (9<sup>th</sup> Cir. August 24, 2004) in which the court found that a false claim to citizenship must be willful. Counsel states that the Director inappropriately gave great weight to the applicant's false claim and used such to render her inadmissible and to substantiate the denial of the Form I-212. Counsel further states that extreme hardship was shown but was not considered nor evaluated by the Director. Finally, counsel requests that the Form I-212 be granted and the applicant be permitted to adjust her status in the United States because there are not substantial negative factors warranting denial of the Form I-212 and because the applicant's removal from the United States will result in extreme hardship to her U.S. citizen spouse and child.

The AAO notes that the court order in *Duran-Gonzalez v. DHS* states that in the Ninth Circuit a Form I-212 may not be denied on the ground that the applicant is inadmissible under section 212(a)(9)(C)(i) of the Act and ten years have not elapsed since the applicant's last departure from the United States. The court order also directs the government from giving any legal effect to denied Forms I-212 in cases where the application was denied on the ground that the applicant was inadmissible pursuant to section 212(a)(9)(C)(i) of the Act. It does not, however, prevent denials of Form I-212 for other reasons.

In its August 14, 2004, decision, *Perez-Gonzalez v. Ashcroft*, the Ninth Circuit Court of Appeals ruled that a Mexican national who returned to the United States following a deportation and had his deportation order reinstated may nonetheless obtain adjustment of status if his Form I-212 is granted. The Ninth Circuit Court of Appeals stated in *Perez-Gonzalez* that: "Given the fact that Perez-Gonzalez applied for the waiver *before* his deportation order was reinstated, he was not yet subject to its terms and, therefore, was not barred from applying for relief."

Since this case arises in the Ninth Circuit, *Perez-Gonzalez* is controlling and, therefore, the applicant is eligible to file a Form I-212. The AAO notes that *Perez-Gonzalez* concerned “the availability of adjustment of status once a favorable determination of permission to reapply has been made.” See *Perez-Gonzalez* at 795. Applicants for adjustment of status under section 245(i) of the Act, as with all applicants for adjustment of status, must be admissible to the United States. Section 245(i)(2)(A) of the Act. There are exceptions for applicants under 245(i) of the Act, but inadmissibility under section 212(a)(9)(A) is not one of them.

In its August 24, 2004, decision, *U.S. v. Karaouni, supra*, the court found that the individual merely attested on a Form I-9 that he was a U.S. citizen or national, and, therefore, did not violate 18 U.S.C. § 911 for which he was convicted. This is not the case in the present matter. The applicant, in the present case, represented herself to be a citizen of the United States in order to gain entry into the United States. The record of proceedings contain a Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867B) regarding the applicant’s admissibility into the United States, dated February 15, 1998. An interview was conducted in the Spanish language and according to the record of proceedings, her statement was read to her before she signed it. During the interview the applicant admitted that she made a false claim to U.S. citizenship in an attempt to procure admission into the United States. She gave no indication that she was unaware of what “U.S. citizen” meant or that she was unaware that by saying “U.S. citizen” she might gain entry to the United States.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant can benefit from the application filed. To recapitulate, on February 14, 1998, the applicant represented herself to be a citizen of the United States in order to gain admission into the United States. 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 made an oral representation of U.S. citizenship in order to gain admission into the United States. Therefore, the applicant is clearly inadmissible pursuant to 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. There is no other waiver available for inadmissibility under this ground.

*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.

The applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act. No waiver is available to an alien who has 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. Accordingly, as the applicant is not admissible to the United States, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.