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

H4

FILE: [redacted] Office: LOS ANGELES, CA Date: MAY 30 2007

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, 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 June 21, 1998, applied for admission to the United States at the San Ysidro, California, Port of Entry. She made a false claim to U.S. citizenship by presenting a U.S. Birth Certificate belonging to another under the name '[redacted]' She was found to be inadmissible pursuant to sections 212(a)(6)(C)(ii) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(ii) and 1182(a)(7)(A)(i)(I), for attempting to procure admission into the United States by making a false claim to U.S. citizenship and attempting entry into the United States without valid documentation. On June 21, 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 without a lawful admission or parole and without permission to reapply for admission. On December 31, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed on her behalf by her spouse. On April 28, 2004, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles, California District Office. The applicant testified she had never been removed from the United States or made a false claim to U.S. citizenship. A fingerprint-based Federal Bureau of Investigations (FBI) inquiry revealed that the applicant had previously been arrested and removed from the United States under the name '[redacted]' On December 29, 2005, the applicant filed the Form I-212. On January 26, 2006, the applicant appeared at CIS' Los Angeles, California District Office for an interview regarding the Form I-212. The applicant 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 remain in the United States and reside with her U.S. citizen spouse and children.

The district director determined that the applicant was inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act for making a false claim to U.S. citizenship for which there is no waiver available. The district director found that, since the applicant was mandatorily inadmissible, no purpose would be served in adjudicating the Form I-212. The district director denied the Form I-212 accordingly. *See District Director's Decision* dated February 24, 2006.

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 misrepresent herself as a U.S. citizen and that she is eligible for permission to reapply for admission. *See Counsel's Brief,* dated March 21, 2006. In support of his 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.

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. As of September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208, aliens making false claims to U.S. citizenship 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.

On appeal, counsel contends that, while, during the January 26, 2006, interview, the applicant admitted that she had been apprehended by immigration officers in either 1997 or 1998 and had given the name [redacted] while presenting a birth certificate, she did not tell the immigration officers that she was a U.S. citizen and did not, therefore, violate section 212(a)(6)(C)(ii) of the Act. The applicant, in her affidavit, states that she did provide the name but never said she was [redacted] and does not know that person. Counsel's assertions are unpersuasive. The FBI inquiry reflects that the applicant was expeditiously removed from the United States under the name "[redacted] and A-number "[redacted] for making a false claim to U.S. citizenship. The corresponding determination of inadmissibility (Form I-860) indicates that the applicant presented a birth certificate that did not belong to her and was deemed inadmissible for making a false claim to U.S. citizenship and attempting entry while not in possession of valid documentation. Contained within the record is a photocopy of the U.S. birth certificate that the applicant presented upon her attempted entry into the United States, reflecting the name [redacted] 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 she had obtained the birth certificate in Tijuana for $200. 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 finds that the applicant, by presenting a U.S. birth certificate belonging to another, is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act for attempting to enter the Untied States by making a false claim to U.S. citizenship. The AAO also finds that the applicant is ineligible for the exception to the inadmissibility grounds under section 212(a)(6)(C)(ii)(II) of the Act.

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.

The applicant is inadmissible under the provisions of section 212(a)(6)(C)(ii) of the Act and no waiver is available. 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.