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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H4

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 06 2007
[consolidated therein]

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) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 after removal was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed and the previous decisions of the Director and the AAO will be affirmed. The application for permission to reapply for admission after removal is denied.

The applicant is a native and citizen of Mexico who attempted to enter the United States on February 21, 2000, by falsely claiming United States citizenship. On February 22, 1999, the applicant was removed from the United States. In March 2000, the applicant reentered the United States without inspection. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), and 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii). She now seeks permission to reapply for admission into the United States, in order to reside with her lawful permanent resident husband and children.

The Director determined that the applicant was inadmissible pursuant to sections 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming United States citizenship. The Director found that “[a]s a result of the applicant’s false claim to United States citizenship, the applicant is inadmissible to the United States. The applicant is not eligible for any relief or benefit from this application.” *Director’s Decision*, dated September 17, 2005. The Director denied the applicant’s Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Id.* On August 21, 2006, the AAO dismissed the appeal finding the applicant statutorily inadmissible to the United States. *Decision of the AAO*, dated August 21, 2006.

In the present motion to reopen and reconsider, the applicant, through counsel, reasserts that she did not falsely claim United States citizenship. *Form I-290B*, filed September 20, 2006. And, if the applicant did claim United States citizenship, she made a “timely retraction,” by claiming she was a Mexican citizen. *Id.*; *see also Motion to Reopen/Reconsider*, page 4-5, filed September 20, 2006. As noted in the initial AAO decision, the applicant stated she was born in San Diego, California, and, therefore, she claimed United States citizenship. The AAO notes that the applicant retracted her claim to United States citizenship after being placed in secondary inspection. Counsel claims that the applicant has not received certain pages from her FOIA request, and it is a violation of her Due Process Rights to not have the opportunity to review those pages. *Form I-290B, supra*; *see also Motion to Reopen/Reconsider*, page 3, *supra*. Counsel states that “[t]he law is clear when an alien is in removal proceedings: Under INA §240, she has a right to examine evidence submitted by the Service against her.” *Motion to Reopen/Reconsider*, page 3, *supra*. The AAO notes that section 240 of the Act applies to removal proceedings before an immigration judge, and not proceedings before the AAO. Additionally, counsel states she filed an appeal with FOIA and has not received a response from FOIA. *Form I-290B, supra*. The AAO notes that counsel received a response from FOIA on December 5, 2005, and the Director stated that the applicant’s FOIA appeal would be adjudicated. Furthermore, the AAO has no jurisdiction over appeals filed with FOIA.

The issues raised by counsel in the motion to reopen/reconsider were all brought up in the initial appeal, and those issues were addressed by the AAO. Counsel did not identify any legal errors in the prior AAO or

Director's decisions, and aside from the statement that the applicant timely retracted her United States citizenship claim, no new information or evidence was submitted in the motion to reopen/reconsider.

8 C.F.R. § 103.5(a) states in pertinent part:

(a) Motions to reopen or reconsider

.....
(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

.....
(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed

....

The issues raised in counsel's motion to reopen and reconsider were thoroughly addressed in the prior AAO decision, and counsel failed to establish any legal error in the AAO or the Director's decisions.

Because counsel failed to identify any erroneous conclusion of law or statement of fact in her brief, the motion will be dismissed.

ORDER: The motion is dismissed and the previous decisions of the Director and the AAO are affirmed. The waiver application is denied.