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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H4

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUN 02 2008

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.

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 January 11, 1999, appeared at the San Ysidro, California Port of Entry. The applicant presented a California Birth Certificate and driver's license bearing the name [REDACTED]. The applicant was referred to secondary inspections where he admitted that he was not a U.S. citizen and had purchased the U.S. birth certificate. The applicant testified that he had previously resided in the United States for a period of seven years prior to his departure and attempt to return to 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), for making a false claim to U.S. citizenship. On January 12, 1999, 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 applicant reentered the United States without inspection or admission on an unknown date but prior to January 31, 2004, the date on which he married his lawful permanent resident spouse, [REDACTED]. On June 1, 2006, the applicant filed the Form I-212. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). He 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 with his lawful permanent resident spouse and two U.S. citizen children.

The 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, a ground of inadmissibility for which there is no waiver. The director determined that the applicant was mandatorily inadmissible and that no purpose would be served in adjudicating the Form I-212. The director denied the Form I-212 accordingly. *See Director's Decision* dated March 27, 2007.

On appeal, counsel contends that the director failed to consider and evaluate the applicant's equities in their entirety. *See Counsel's Brief*, dated April 23, 2007. In support of his contentions, counsel submits only the referenced brief. 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.

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. The applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act based on his false claim to U.S. citizenship in 1999.

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

- (i) 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. –

- a. 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.

- b. 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.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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 January 12, 1999, the applicant was expeditiously removed from the United States. The corresponding determination of inadmissibility (Form I-860) and Record of Deportable/Inadmissible Alien (Form I-213) indicate that the applicant made a false claim to U.S. citizenship by presenting a U.S. birth certificate in order to seek admission to the United States and he was deemed inadmissible for making a false claim to U.S. citizenship. The Record of Sworn Statement in Proceedings under section 235(b)(1) of the Act (Form I-867B) indicates that, after being placed in secondary inspection, the applicant admitted that he was not a U.S. citizen and that he did not have documentation to enter the United States. The record reflects that the applicant was not under the misconception that he was a U.S. citizen at the time he made the false claim to U.S. citizenship and that both of his parents were citizens of Mexico.

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.