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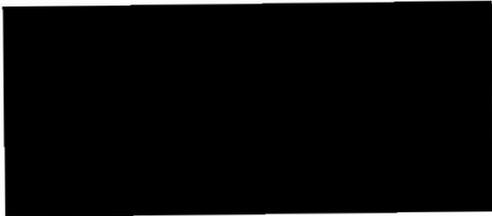
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U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H4



FILE:



Office: VERMONT SERVICE CENTER

Date:

JUN 06 2008

IN RE:

Applicant:



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:

SELF-REPRESENTED

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, Vermont 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 initially entered the United States without inspection in 1991. On an unknown date, the applicant departed the United States. On October 19, 1998, the applicant attempted to enter the United States by falsely claiming United States citizenship. On October 20, 1998, the applicant was expeditiously removed from the United States. On an unknown date, the applicant reentered the United States without inspection. On September 19, 2005, the applicant's son, [REDACTED] was born in New Jersey. The applicant is inadmissible to the United States under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), and section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii). He now seeks permission to reapply for admission into the United States, in order to reside with his United States citizen son.

The director determined that the applicant is inadmissible pursuant to section 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), for being present in the United States without being admitted, and denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated December 22, 2006.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien 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 5 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 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 of an aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney

General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.- Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

Section 212(a)(6). Illegal entrants and immigration violators.-

(A) Aliens present without admission or parole.-

(i) In general.- An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General [now, Secretary, Department of Homeland Security], is inadmissible.

....

(C) Misrepresentation.-

(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 AAO notes that aliens making false claims to United States citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. As the applicant's false claim to United States citizenship occurred after September 30, 1996, the applicant is clearly inadmissible to the United States and not eligible for a waiver under section 212(a)(6)(C)(ii) of the Act,

Additionally, the applicant is inadmissible under sections 212(a)(6)(A)(i), 212(a)(9)(A)(i), and 212(a)(9)(C) of the Act, for being present without admission or parole, for being ordered removed under section 235(b)(1) of the Act, and being unlawfully present in the United States after a previous immigration violation, respectively.

On appeal, the applicant claims that he returned to the United States illegally after the mother of his son became sick. *See letter from the applicant*, dated January 24, 2007. The applicant “understand[s] that [he] make [sic] a big mistake.... By the time [he] was deported [he has] no idea that [he] can not [sic] return before five years no body told [him] and [he has] nothing in writing that says so in Spanish language.” *Id.* The AAO notes that during secondary inspection, the applicant stated that he understood that he was barred from entering the United States for five years. *Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated October 19, 1998. Additionally, the AAO notes that the applicant’s interview was translated into Spanish and the applicant signed his sworn statement verifying that he understood the contents of the statement. *Id.* The AAO notes that the applicant presented a Puerto Rican birth certificate and numerous other documents in someone else’s name in order to gain entry into the United States, and copies of these documents are contained in the record. During secondary inspection, the applicant admitted to his true name and nationality. *Id.* The AAO notes that the applicant presented documents that he is employed in the United States without authorization and that his son is a patient of The Children’s Hospital at Saint Peters University Hospital. *See letter from [REDACTED] General Manager, Old Country Buffet*, undated; *see also letter from [REDACTED], Mr. [REDACTED]*, dated January 2, 2007; *see also letter from [REDACTED], MD, Saint Peter’s Pediatric Faculty Group*, dated January 18, 2007.

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. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the director.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary’s discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.