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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
[relates]

Date: **MAY 13 2008**

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) 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, 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 on January 23, 1990. On January 25, 1990, the applicant voluntarily departed to Mexico. On April 11, 1998, the applicant's son, John, was born in California. On December 7, 1998, the applicant married Ms. [REDACTED] a United States citizen, in Mexico. On December 30, 1998, the applicant attempted to enter the United States by presenting a counterfeit entry document. On December 31, 1998, the applicant was expeditiously removed from the United States. A couple of days later, the applicant reentered the United States without inspection. On February 3, 1999, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. In February 1999, the applicant departed the United States for Mexico, and a couple of weeks later, the applicant's United States citizen wife and son joined the applicant in Mexico. On February 23, 2000, the applicant's son, [REDACTED], was born in Mexico. In 2001, the applicant's wife and children returned to the United States. On November 7, 2001, the applicant's Form I-130 was approved. In 2003, the applicant reentered the United States without inspection. 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)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(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 under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside with his United States citizen wife and United States citizen children.

The director determined that the applicant is inadmissible pursuant to section 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 29, 2006.

The AAO notes that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act. Other than the applicant's own statement and counsel's brief, the AAO notes that the applicant failed to provide any evidence establishing that he never made a false claim to United States citizenship. *See applicant's declaration*, dated November 6, 2006 ("At any point during the original inspection to [his] departure to Mexico did [he] say that [he] was a citizen of the United States. [He] originally gave him a Mexican Passport with a fake visa stamp on it. [He] could not have possibly told anyone that [he] was a citizen of the United States since [he] was carrying a Mexican document."), *see also appeal brief*, filed December 6, 2006 (Counsel asserts that the director mistakenly erred in "finding that [the applicant] made a false claim of U.S. citizenship in 1998."). The record establishes that on December 31, 1998, the applicant was expeditiously removed from the United States based on a false claim to United States citizenship. Additionally, the American Consulate General in Ciudad Juarez found that the applicant made a false claim to United States citizenship. The AAO finds that the applicant failed to establish that he did not make a false claim to United States citizenship; therefore, he is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. 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 AAO finds the applicant inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Act, for being ordered removed under section 235(b)(1) of the Act, section 212(a)(9)(B)(i)(II) of the Act, for his unlawful presence in the United States, and section 212(a)(6)(A)(i) of the Act, for being present in the United States without admission or parole.

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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, 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).

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, and (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 from being present in the United States without lawful admission or parole.

The applicant states that he and his wife moved to "Mexico and [applied] for [his] legal residence there... While [they] lived in Tepic, [he] started to work in the business of selling fresh seafood to restaurants and fish markets." *Applicant's declaration, supra; see also declaration of [REDACTED]*, dated November 21, 2005 ("[They] decided that it was better for [them] to move to Mexico and resolve [their] case there. [The applicant] returned to Mexico in February of 1999 and [she] traveled to him two or three weeks

later.”). The applicant states that after his second interview with the Service, “[the applicant’s wife] and [the applicant] became more frustrated and depressed. [They] were not doing well economically and [they] decided to move to the city of Tijuana so that [the applicant’s wife] could work in San Diego. [He] stayed in Tijuana working in odd jobs at times and at other times caring for [his] children.” *Applicant’s declaration, supra*. The applicant’s wife states “[t]hings got very hard for [them] and by spring of 2001 [they] decided that it was better for [her] to return to the United States and work in order to support [their] family...It was a very difficult decision but [they] had no other choice.” *Declaration of [REDACTED], supra*. The applicant states that after his visa was denied, “[they] were devastated. [They] did not know what to do and [they] grew desperate...Finally, out of desperation, [he] took the drastic decision to come to the United States despite the risks involved. [He] had to come to live with [his] family and find a new opportunity to provide for [his] wife and children.” *Applicant’s declaration, supra*. The applicant’s wife states “[they] grew very desperate because [she] was separated from [her] husband and bring with [her] two children was very difficult for [her]. Finally, in 2003 [she] was promoted in [her] work and [she] was told that [she] needed to travel to Columbus, Ohio for training. [She] could not pass such opportunity and [she] was forced to ask [her] husband to return to the United States to help [her] with [her] career and [their] children. Despite the consequences to him, [the applicant] was willing to do it and ultimately he entered the United States without being inspected.” *Declaration of [REDACTED], supra*. The AAO finds that the applicant’s entries into the United States without inspection and his years that he resided in the United States without authorization are unfavorable factors. However, the AAO notes that the applicant has attempted to legalize his immigration status by filing a Form I-130 and attending his visa interviews in Mexico, and he has no criminal record.

The applicant’s wife states the applicant “is not only the father of [her] children but he is also [her] best friend and the best support [she has]...[I]f he is unable to come [to the United States, it will most likely destroy [their] family because [they] once tried to live in Mexico but [they] simply could not survive. The only thing left is total separation.” *Id.* Regarding the hardships the applicant’s family may face, the AAO notes that unlike sections 212(g), (h), and (i) of the Act (which relate to waivers of inadmissibility for prospective immigrants), section 212(a)(9)(A)(iii) of the Act does not specify hardship threshold requirements which must be met. An applicant for permission to reapply for admission into the United States after deportation or removal need not establish that a particular level of hardship would result to a qualifying family member if the application were denied. The AAO will consider the hardship to the applicant’s spouse and children, but it will be just one of the determining factors.

The record of proceedings reveals that on December 31, 1998, the applicant was expeditiously removed from the United States. A couple of days later, the applicant reentered the United States without inspection. In February 1999, the applicant departed the United States for Mexico. In 2003, the applicant reentered the United States without inspection. Based on the applicant’s previous order of deportation, the applicant is clearly inadmissible under section 212(a)(9)(A)(i) of the Act. Additionally, the applicant is inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act, for his false claim to United States citizenship, section 212(a)(9)(B)(i)(II) of the Act, for his unlawful presence in the United States, and section 212(a)(6)(A)(i) of the Act, for being present in the United States without admission or parole.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work unlawfully. *Id.*

The favorable factors in this matter are the applicant's family ties to United States citizens, his wife and children, general hardship they may experience, his attempts at legalizing his status in Mexico, his assistance in helping to take care of his children, the lack of a criminal record, and the approval of a petition for alien relative.

The AAO finds that the unfavorable factors in this case include the applicant's initial entry without inspection, his attempt to enter the United States by fraud, his two illegal reentries into the United States subsequent to his December 31, 1998 removal, and periods of unauthorized presence.

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.

The AAO finds that even if the applicant established that he never made a false claim to United States citizenship, he is still inadmissible pursuant to sections 212(a)(9)(A)(i), 212(a)(9)(B)(i)(II), and 212(a)(6)(A)(i) of the Act. The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones and his application for permission to reapply for admission is denied as a matter of discretion..

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.