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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: SAN FRANCISCO, CA  
(RELATES)

Date: **OCT 27 2008**

IN RE:

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:

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 Field Office Director, San Francisco, 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 August 19, 2000, attempted to enter the United States at the San Ysidro, California Port of Entry by verbally claiming to be a U.S. citizen born in San Francisco, California. The applicant was referred to secondary inspections where she admitted that he was not a U.S. citizen. The applicant 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 falsely claiming to be a U.S. citizen and being an immigrant without valid documentation. On August 20, 2000, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act and returned to Mexico. The applicant reentered the United States after having been removed without a lawful admission or parole and without permission to reapply for admission on an unknown date, but prior to March 22, 2001, the date on which she married her then lawful permanent resident spouse, [REDACTED], in San Francisco, California. On April 16, 2001, Mr. [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on May 21, 2005. On March 7, 2006, [REDACTED] became a naturalized U.S. citizen. On May 5, 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On August 28, 2006, the applicant filed 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). She 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 in the United States with her U.S. citizen spouse and five U.S. citizen children.

The field office director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Field Office Director's Decision* dated September 28, 2007.

On appeal, counsel contends that the applicant's case merits a grant of the application and that the favorable and humanitarian factors are overwhelming. *See Counsel's Brief*, dated November 15, 2007. In support of his contentions, counsel submits the referenced brief and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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. –

- 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.

(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 appeal, counsel contends that the field office director's finding that the applicant made a false claim to be a U.S. citizen is unsubstantiated. Counsel asserts that, during her adjustment of status interview, the applicant stated that she did not speak English in 2000, and that she did not provide any information in that regard in either the English or Spanish language. However, the record reflects that, on August 29, 2006, during her interview, the applicant stated that she could not recall what she said to the immigration officers at the port of entry. *See Form I-485, noted change 7*, dated August 29, 2008. Additionally, the Record of Sworn Statement in Proceedings (Form I-867B, dated August 20, 2000) indicates that, after being placed in secondary inspection, the applicant admitted that she was not a U.S. citizen and that she did not have documentation to enter the United States. The applicant admitted that she had attempted to enter the United States by stating that she was born in San Francisco, California. The applicant admitted that she knew she was making a false claim to U.S. citizenship. The applicant admitted that she knew it was illegal to attempt to enter the United States by making this claim. 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 applicant made these statements in the Spanish language through an interpreter. Counsel's assertions are contrary to the statements made by the applicant.

The record supports a finding that the applicant was aware that she was making a false claim to U.S. citizenship at the time she made the verbal claim. The AAO concludes that the applicant made an oral false claim to U.S. citizenship in an attempt to enter the United States in 2000, and is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act.

*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 as a matter of discretion.

**ORDER:** The appeal is dismissed.