

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H4

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

OCT 28 2008

[relates]

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 Center 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 Peru who initially entered the United States on June 24, 1993, on a B-2 nonimmigrant visa with authorization to remain in the United States until December 23, 1993. The applicant failed to depart the United States when his authorization expired. On January 27, 1994, the applicant's mother, a lawful permanent resident of the United States at the time, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On April 19, 1994, the applicant's Form I-130 was approved. On June 3, 1996, the applicant was arrested for presenting fraudulent documents. On June 20, 1996, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On June 27, 1996, the applicant was convicted in the United States District Court, Middle District of Florida, of false representation of a United States Citizen, in violation of 18 U.S.C. § 911, and was sentenced to one (1) year probation, time served, and a monetary fine. On the same day, an Order to Show Cause and Notice of Hearing (OSC) was issued against the applicant. On December 24, 1997, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601). On August 5, 2002, an immigration judge granted the applicant's Form I-601 and Form I-485. On August 7, 2002, the Service appealed the immigration judge's decision to the Board of Immigration Appeals (Board). On July 24, 2003, the applicant departed the United States for Peru. On February 19, 2004, the Board sustained the Service's appeal and ordered the applicant removed from the United States. On October 29, 2004, a Warrant of Removal/Deportation (Form I-205) was issued against the applicant. The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). 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 naturalized United States citizen mother and siblings.

The Center Director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), section 212(a)(2)(A)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(I), and section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), and "no purpose would be served in approving this [Form I-212]." *Center Director's Decision*, dated May 30, 2007. The Center Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Id.*

The AAO finds that the Center Director erroneously determined that the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(I) of the Act, for being convicted of a crime involving moral turpitude. The AAO notes that there are Board decisions that generally accept the holding that a conviction for falsely claiming United States citizenship does not involve moral turpitude; and specifically a conviction under 18 U.S.C. § 911 does not involve moral turpitude. *See Matter of K-*, 3 I&N Dec. 69 (BIA 1947); *see also Matter of Y-*, 7 I&N Dec. 697, 699 (BIA 1958) ("this Board had held that a false claim to citizenship does not involve moral turpitude"); *Matter of B-*, 7 I&N Dec. 342, 345 (BIA 1956) ("We note that counsel has cited the *Duncan* case as holding that a crime of making a false statement in the passport application (18 U.S.C. 1542) requires less than the crime of making a false representation of United States citizenship (18 U.S.C. 911), which latter statute we have held does not involve moral turpitude.").

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

(A) Certain alien previously removed.-

....

(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 [Secretary of Homeland Security] has consented to the aliens' reapplying for admission.

The AAO finds that the applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Act, for his February 19, 2004 removal order.

Sections 212(a)(6)(C)(i), (ii), and (iii) of the Act provides, in pertinent part, that:

(i) In general.—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 (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 record reflects that on June 3, 1996, the applicant falsely and willfully misrepresented himself to be a citizen of the United States, in that he stated he was born in New York. On June 27, 1996, the applicant was convicted of false representation of a United States Citizen, in violation of 18 U.S.C. § 911, and was sentenced to one (1) year probation, time served, and a monetary fine.

Aliens making a false claim to United States citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. Because this provision of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) is not retroactive, aliens making a false claim to United States citizenship prior to September 30, 1996, are eligible to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

As the applicant's false claim to United States citizenship occurred prior to September 30, 1996, the AAO finds him also inadmissible under section 212(a)(6)(C)(i) of the Act.

A review of the 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.

On appeal, the applicant, through counsel, asserts that the Center Director "failed to adjudicate the applicant under the standard for an I-212 application outlined in *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973). The [Center Director] misconstrued the facts of the ROP and relied upon BIA decisions that are inapposite to this matter. The [Center Director] effectively pretermitted the application by relying upon BIA decisions not fitting to the matter." *Form I-290B*, filed June 29, 2007. The AAO notes that the majority of the time that the applicant resided in the United States was without authorization and that is an unfavorable factor. Additionally, the applicant was employed in the United States without authorization and that is an unfavorable factor. The AAO notes that a psychiatrist¹ diagnosed the applicant's mother with depression. *Letter from Optimus Health Care*,

¹ The AAO notes that the doctor's name is illegible.

dated September 10, 2007. “The worsening of [the applicant’s mother’s] symptoms go back to 2003 when [the applicant] had to return to Peru due to immigration issues. Despite treatment consisting of psychotherapy [and] medication, [and] despite some improvement, [the applicant’s mother’s] symptoms have persisted.... It is [the doctor’s] professional opinion that [the applicant’s] return to the United States would have a very favorable impact upon her symptoms.” *Id.* 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 mother, but it will be just one of the determining factors.

The record of proceeding reveals that on August 5, 2002, an immigration judge granted the applicant’s Form I-601 and Form I-485. On July 24, 2003, the applicant departed the United States. On February 19, 2004, the Board ordered the applicant removed from the United States. Based on the applicant’s previous order of removal, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii) of the Act.

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 his United States citizen mother and siblings, general hardship they may experience, and an approved petition for alien relative. The unfavorable factors in this case include the applicant’s failure to abide by the terms of his initial admission into the United States, his false claim to United States citizenship, his criminal record, and periods of unauthorized employment and presence.

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. 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.