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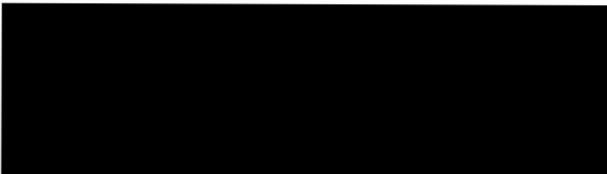
U.S. Department of Homeland Security
20 Massachusetts Avenue N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 17 2009

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who attempted to enter the United States on February 8, 2004, by falsely claiming United States citizenship. On March 11, 2004, the applicant's United States citizen wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On April 15, 2004, the applicant was expeditiously removed to Canada. On June 17, 2004, the applicant's Form I-130 was approved. On June 10, 2005, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) and an Application for Waiver of Grounds of Excludability (Form I-601). On September 19, 2006, the Director denied the applicant's Form I-212 and Form I-601. 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), 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 in the United States with his spouse.

The Director determined that the applicant is "statutorily inadmissible to the United States pursuant to Section 212(a)(6)(C)(ii) of the Act, and no waiver of that statute is available," and he denied the applicant's Form I-212 accordingly. *Decision of the Director*, dated September 19, 2006.

On appeal, the applicant, through counsel, asserts that the "Director's [d]ecision is based upon a misinterpretation of the facts of this case and fails to correctly apply the applicable laws and principles." *Form I-290B*, filed October 18, 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.

(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.

The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, for being ordered removed under section 235(b)(1) of the Act.

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

(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. The record reflects that on February 8, 2004, at the Edmonton International Airport, the applicant claimed to be a United States citizen in an attempt to gain entry into the United States. During secondary inspection, the applicant admitted to his Canadian citizenship. *See Withdrawal of Application for Admission/Consular Notification (Form I-275)*, dated February 8, 2004. As the applicant's false claim to United States citizenship occurred after September 30, 1996, the applicant is inadmissible to the United States and not eligible for a waiver under section 212(a)(6)(C)(ii) of the Act.

In *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964), it was 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 Center 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.