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U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 2 0 2009

IN RE: [redacted]

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:

[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.

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 Acting Director, Vermont Service Center, 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 Canada who, on November 17, 2000, married his U.S. citizen spouse, , in Fort Worth, Texas. On February 25, 2003, the applicant appeared at the Sweet Grass Montana port of entry. The applicant attempted to enter the United States by verbally claiming to be a U.S. citizen. When asked, the applicant was unable to provide documentation proving his U.S. citizenship. After the applicant stated he had gained U.S. citizenship through marriage and residence in the United States, he was referred to secondary inspections. In secondary inspections, the applicant admitted that he was not a U.S. citizen. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming to be a U.S. citizen. On February 25, 2003, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act and returned to Canada. On April 7, 2003, **filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On April 23, 2003,** filed a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the applicant. On February 11, 2004, the Form I-129F was approved. On September 23, 2004, the Form I-130 was approved. On March 29, 2005, 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). He 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 his U.S. citizen spouse.

The acting director determined that the applicant was mandatorily inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act and that no purpose would be served in adjudicating the Form I-212. The acting director denied the Form I-212 accordingly. *See Acting Director's Decision* dated January 18, 2006.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. *See Counsel's Memorandum,* dated February 15, 2006. In support of his contentions, counsel submits the referenced memorandum, a letter from the applicant's spouse and medical documentation. 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 –
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> 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 acting director erred in finding that the applicant made a false claim to be a U.S. citizen. Counsel contends that the applicant was under the mistaken, but honest, belief that he was a U.S. citizen because he had married a U.S. citizen, owned property in the United States and had resided in the United States for more than five years. Counsel contends that the applicant was unaware that the statements he made were false and that it was subjectively reasonable that the applicant thought he was a U.S. citizen through his prolonged residence in the United States, his marriage to a U.S. citizen, his payment of income taxes and his submission of an application for naturalization. Counsel further contends that the applicant's state of exhaustion, his treatment for depression, stress and anxiety and his inability to take his medication compounded his confusion in making the statements that he made at the port of entry. The AAO finds that there is no exception to a finding of inadmissibility pursuant to section 212(a)(6)(C)(ii) of the Act other than a case in which each of the alien's natural parents is or was a U.S. citizen, the alien permanently resided in the U.S. prior to the age of 16 and the alien reasonably believed that he or she was a citizen. The applicant in the instant case is not eligible for the exception to inadmissibility under 212(a)(6)(C)(ii) of the Act. Additionally, unlike inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact, knowledge of the falsity of the information given and intent of the alien is not required for a finding of inadmissibility pursuant to section 212(a)(6)(C)(ii) of the Act.

Counsel's assertions that the applicant submitted an application for naturalization would render the applicant's claim to U.S. citizenship to be subjectively reasonable are unpersuasive. There is no

evidence in the record to establish that the applicant has ever filed any applications or petitions with U.S. Citizenship and Immigration Services (USCIS). There is no evidence in the record to establish that the applicant's spouse filed any application or petition with USCIS prior to the applicant's removal from the United States. The AAO notes that an Application for Naturalization (Form N-400) and the accompanying instructions clearly state that an applicant must be a lawful permanent resident and, in the case of an applicant married to a U.S. citizen, must have been married to and living with the U.S. citizen for a period of three years. Even if the applicant were under the mistaken belief that he was a lawful permanent resident despite not being in possession of documentation establishing his lawful permanent residence or not applying for lawful permanent resident status, the applicant, at the time of his attempted entry into the United States had only been married to and living with his U.S. citizen spouse for two years and three months. Furthermore, the Form N-400 and its instructions clearly state that an applicant does not become a naturalized U.S. citizen until he or she passes the English and Civics test and takes the oath of allegiance at a public oath ceremony. The Form N-400 and its instructions also clearly state that by filing the application an applicant is not yet a U.S. citizen. The AAO finds that counsel's and the applicant's contention that the applicant subjectively and reasonably believed that he was a U.S. citizen is not subjectively or objectively reasonable.

On appeal, counsel contends that the applicant made a timely retraction of his false claim to U.S. citizenship upon being informed by immigration officers that he was not a U.S. citizen through his marriage to a U.S. citizen, his payment of income taxes and his submission of an application for naturalization. A timely retraction has been found only in cases where applicants used fraudulent documents *en route* and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. *See, e.g., Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel,* 18 I&N 33 (BIA 1984). In the instant case, the Record of Deportable/Inadmissible Alien (Form I-213) indicates that the applicant only retracted his claim to U.S. citizenship after having been placed into secondary inspection by immigration officials.

Counsel contends that the applicant was denied the opportunity to timely retract his false statement as is required by the Department of State Foreign Affairs Manual (FAM). Counsel refers to the guidance set forth by the State Department in its 9 FAM Sec. 40.63 Note 4.6, which indicates that a timely retraction would serve to purge a misrepresentation. The AAO notes that 9 FAM Sec. 40.63 Note 4.6, as cited by counsel, relates to misrepresentations under section 212(a)(6)(c)(i), not false claims to U.S. citizenship under section 212(a)(6)(c)(ii) of the Act, the section under which the applicant is inadmissible. The guidance relating to section 212(a)(6)(c)(ii) of the Act, found in 9 FAM Sec. 40.63 Note 11, makes no reference to timely retractions, only that a false claim to U.S. citizenship must have been properly categorized. In any event, as discussed above, the AAO has found that the applicant's assertion that he was under the mistaken belief that he was a U.S. citizen is subjectively and objectively unreasonable, and the record reflects that the applicant did not retract his claim until he was asked to make a sworn statement in secondary inspection. This cannot be considered timely.

The AAO finds that the applicant, by making an oral false claim to U.S. citizenship in 2002, is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act for attempting to enter the United States by making a false claim to U.S. citizenship. The AAO also finds that the applicant is ineligible for the exception to the inadmissibility grounds under section 212(a)(6)(C)(ii)(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.