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U.S. Citizenship  
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Services

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*Hly*

FILE:

Office: NEBRASKA SERVICE CENTER  
(RELATES)

Date:

FEB 20 2009

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.

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, Nebraska 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 Mexico who, on April 9, 1979, was apprehended by immigration officials. The applicant initially stated that he was "[REDACTED]" a U.S. citizen born in Carrizo Springs, Texas. The applicant subsequently admitted that he had last entered the United States in August 1976, at or near McAllen, Texas by crossing a bridge and stating to U.S. immigration officials that he was a U.S. citizen. The applicant was found to be present in the United States without inspection but was allowed to depart voluntarily to Mexico by June 10, 1979. The applicant applied for and was granted an extension of voluntary departure until September 22, 1979. The applicant failed to comply with the order of voluntary departure and, on November 2, 1981, was placed into immigration proceedings. On December 1, 1981, the immigration judge granted the applicant voluntary departure until January 4, 1982. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On January 25, 1982, the applicant's sister filed a Petition for Alien Relative (Form I-130) on his behalf, which was approved on February 8, 1982. On July 1, 1982, a warrant for the applicant's removal was issued. The applicant failed to comply with the order of removal.

On August 9, 1982, the applicant was convicted of conversion. On March 16, 1984, the applicant's U.S. citizen spouse filed a Form I-130 on his behalf, which was approved on March 30, 1984. On January 7, 1985, the applicant's sister withdrew the Form I-130 approved on behalf of the applicant. On January 11, 1985, the applicant was removed from the United States and returned to Mexico. On May 16, 1985, the Form I-130 filed by the applicant's spouse was revoked after she withdrew the petition. The applicant's spouse withdrew the Form I-130 because she and the applicant divorced. The applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission on an unknown date, but prior to January 6, 1987, the date of which the applicant was found guilty of driving under the influence and/or drug abuse. The applicant was sentenced to 4 days in a Driving While Intoxicated (DWI) program, one day of which was suspended, and he was fined. On September 16, 1987, the applicant filed an Application for Temporary Residence Status (Form I-687). On October 14, 1988, the applicant's Form I-687 was denied. The applicant filed an appeal with this office. On August 21, 1989, this office dismissed the applicant's appeal.

On March 21, 1990, the applicant was convicted of disorderly conduct, intoxication. The applicant was fined. On March 7, 1994, the applicant was informed that he was a member of the [REDACTED] lawsuit and he was entitled to a stay of removal and temporary employment authorization. On May 19, 1995, the applicant pled guilty to and was convicted of aiding a felon or person charged as a felon in violation of 21-3812 of the Kansas Statutes. The applicant was sentenced to 8 months in jail and 24 months of probation. On January 4, 1996, the applicant was convicted of an attempt to commit an offense in violation of section 501.09 of the Ohio Statutes. The applicant was fined. On June 18, 1997, the [REDACTED] lawsuit was dismissed and the applicant was informed on December 10, 1997 that he was no longer entitled to a stay of removal or employment authorization. On April 26, 2002, the applicant was convicted of disorderly conduct and/or disturbance. The applicant was sentenced to 30 days in jail, which was suspended, and the applicant was given one year of probation and fined. On November 8, 2004, the applicant's aiding a felon or person charged

with a felon conviction was expunged because he had completed his sentence and probation and more than five years had passed since the applicant's sentence had been imposed and he was discharged from probation. On April 28, 2005, the applicant filed the Form I-212. On January 22, 2008, the applicant's U.S. citizen son filed a Form I-130 on behalf of the applicant, which was approved on May 12, 2008. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). 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 remain in the United States with his four U.S. citizen children.

The acting director determined that the applicant was inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, for seeking admission after having been removed from the United States. The acting director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Acting Director's Decision* dated October 13, 2006.

On appeal, counsel contends that the acting director failed to give the applicant's equities proper weight. *See Counsel's Brief*, dated December 12, 2006. 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)(9) of the Act states in pertinent part:

(A) Certain aliens 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 five 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 who 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 on a 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 alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous

territory, the Secretary has consented to the alien's reapplying for admission.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act based on his admission to the United States by fraud in 1976.

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. –

a. 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.

b. 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).

The AAO notes that aliens making false claims to U.S. 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.

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.*

On appeal, counsel contends that the applicant made a timely retraction of his false claim to U.S. citizenship in 1979 because the Record of Deportable Alien (Form I-213) indicates that the applicant admitted he was a Mexican citizen and was not documented to enter the United States "after several minutes." The Department of State Foreign Affairs Manual (FAM) offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act. Stated in part; (1) a misrepresentation can be made orally or in writing, (2) silence or the failure to volunteer information does not in itself constitute a misrepresentation, (3) the misrepresentation must have been practiced on an official of the U.S. government, generally a consular or immigration officer, (4) a timely retraction will avoid the penalty of the statute. Whether a retraction is timely depends on the circumstances of the particular case.

A timely retraction has been found in cases where applicants used fraudulent documents only *en route* to the United States 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 applicant retracted his claim to U.S. citizenship only after having been questioned by immigration officials for several minutes. Based on the record, the AAO finds that the applicant did not offer a timely retraction of his claim to U.S. citizenship. However, the applicant's inadmissibility under 212(a)(6)(C)(i) of the Act is not based on the applicant's 1979 false claim to U.S. citizenship, as the applicant was not seeking a benefit under the Act at the time he made this claim. The AAO finds that it is the applicant's admission to having obtained entry to the United States in 1976 by falsely claiming to be a U.S. citizen that renders him inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The AAO notes that, while the applicant indicated he was only 16 years of age at the time he made the false claim to U.S. citizenship, there is no age-related exemption under section 212(a)(6)(C)(i) or (ii) of the Act. In order to seek a waiver of inadmissibility under section 212(i) of the Act, an applicant must file an Application for Waiver of Ground of Inadmissibility (Form I-601).

On appeal, counsel contends that the applicant's false claim to U.S. citizenship should not be held against him because he was never charged with making a false claim to U.S. citizenship and there is no "conviction" for his actions. The regulations, however, do not allow such an exception, and the AAO is unaware of any legal precedent that would support counsel's reasoning in this regard.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The record indicates that the applicant does not have a U.S. citizen or lawful permanent resident spouse or parents. The record reflects that the applicant is not currently married. The record reflects that the applicant's mother is deceased. While statements by the applicant and counsel indicate that the applicant's father may be a lawful permanent resident or U.S. citizen, a search of U.S.

Citizenship and Immigration Services' (USCIS) electronic records indicates that the applicant's father ( [REDACTED] and [REDACTED] is a native and citizen of Mexico, and that he does not have any legal status in the United States. Counsel and the applicant do not offer any evidence to establish the applicant's father's lawful permanent resident status.

The AAO finds that the applicant has no qualifying family members on which to base a waiver request under section 212(i) of the Act. The AAO therefore finds that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and is statutorily ineligible for relief pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

*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 subject to the provisions of section 212(a)(6)(C)(i) of the Act, which are very specific and applicable. The applicant is statutorily ineligible for a waiver of this ground of inadmissibility. 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.