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U.S. Citizenship
and Immigration
Services

H4



FILE: [Redacted]

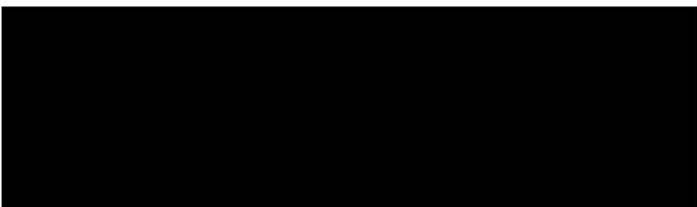
Office: SACRAMENTO, CA

Date: **FEB 27 2009**

IN RE: [Redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(iii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(A)(iii) and 1182(a)(9)(C)(iii)

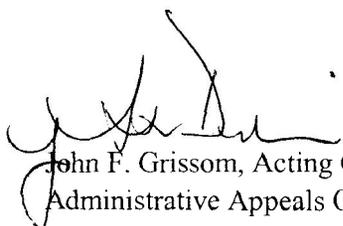
ON BEHALF OF APPLICANT:



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 Field Office Director, Sacramento, 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 January 12, 2000, attempted to enter the United States at the Nogales, Arizona Port of Entry. The applicant stated that she was a U.S. citizen to immigration officers. Upon being asked for evidence of her U.S. citizenship, the applicant presented a U.S. Birth Certificate bearing the name [REDACTED].” The applicant was placed into secondary inspections. During the interview in secondary inspections, the applicant admitted to immigration officers that she was not a U.S. citizen and did not have any documentation to entitle her to enter the United States. 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 making a false claim to U.S. citizenship. On January 12, 2000, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). On March 20, 2004, the applicant married her U.S. citizen spouse [REDACTED]s). On December 22, 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed on her behalf by [REDACTED]. On the same day, the applicant filed the Form I-212. On March 15, 2007, the applicant appeared at U.S. Citizenship and Immigration Services’ (USCIS) Sacramento, California field office. The applicant testified that she had reentered the United States without permission or admission on January 15, 2000. On March 15, 2007, the Form I-130 was approved. On September 4, 2007, the applicant’s Form I-485 was denied. The applicant is inadmissible under sections 212(a)(9)(A)(i) and 212(a)(9)(C)(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(A)(i) and 1182(a)(9)(C)(i), as an alien who failed to remain outside the United States for a period of five years after his or her removal, and as an alien who has illegally reentered the United States after having been removed. She seeks permission to reapply for admission into the United States under sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(iii) of the Act, 8 U.S.C. §§ 1182(a)(9)(A)(iii) and 1182(a)(9)(C)(iii) in order to reside in the United States with her U.S. citizen spouse and two U.S. citizen children.

The field office director determined that the applicant was inadmissible for making a false claim to U.S. citizenship, had illegally reentered the United States after having been removed and she was not eligible for permission to reapply for admission. The field office director denied the Form I-212 accordingly. *See Field Office Director’s Decision* dated September 4, 2007.

On appeal, counsel contends that the applicant does not require permission to reapply for admission because it has been more than five years since her removal from the United States. Counsel contends that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. Counsel contends that the field office director improperly denied the applicant’s Form I-212 because she failed to evaluate or give the proper weight to all the relevant favorable factors and gave undue weight to supposedly unfavorable factors. *See Counsel’s Brief*, dated January 2, 2008. In support of his contentions, counsel submits the referenced brief and copies of documentation already in the record. The entire record was considered 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.

Counsel, on appeal, asserts that the applicant is not required to apply for permission to reapply for admission into the United States because it has been more than five years from the date of her removal. An applicant does not require permission to reapply for admission *only* if the applicant remained *outside* the United States for the entire period during which he or she was deemed inadmissible pursuant to section 212(a)(9)(A) of the Act. In the instant case, the applicant has not remained outside the United States for the period of her *inadmissibility* and she is, therefore, required to apply for permission to reapply for admission into the United States. Furthermore, the applicant requires permission to reapply for admission to the United States because she is

inadmissible pursuant to section 212(a)(9)(C)(i) of the Act for illegally reentering the United States after having been removed.¹

On appeal, counsel asserts that the applicant was not removed from the United States pursuant to section 212(a)(6)(C)(ii) of the Act and the immigration officer did not consider the dire consequences of finding the applicant inadmissible under this section of the Act because the Notice to Alien Ordered Removed/Departure Verification only states that the applicant is inadmissible for a period of five years. However, while the Notice to Alien Ordered Removed/Departure Verification states that the applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act for a period of five years, a Determination of Inadmissibility (Form I-860), issued to the applicant on the same day, indicates that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, for making a false claim to U.S. citizenship.

On appeal, counsel further asserts that the applicant timely retracted her false claim to U.S. citizenship and the claim does not render her inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. Counsel contends that, as dictated by the Ninth Circuit Court of Appeals' (Ninth Circuit) decision in *U.S. v. Karaouni*, 379 F.3d 1139 (9th Cir. 2004), the applicant's presentation of a U.S. birth certificate does not constitute misrepresentation. He asserts that the applicant admitted that she was not a U.S. citizen as soon as immigration officers questioned her in secondary inspections. However, *U.S. v. Karaouni*, refers to a criminal conviction for making a false claim to U.S. citizenship and has no bearing on the applicant's case.

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). Counsel contends that the applicant made a timely retraction of her claim to U.S. citizenship and 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, in the instant case, the applicant retracted her claim to be a U.S. citizen only after having been placed into secondary inspection by immigration officials. Moreover, the applicant first made an oral false claim to U.S. citizenship and then presented a U.S. birth certificate to prove her claim of U.S. citizenship prior to being placed into secondary inspections.

The AAO finds that the applicant, by making an oral false claim to U.S. citizenship and presenting a U.S. Birth Certificate that did not belong to her in 2000, 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.

¹ The AAO notes that, in order for the applicant to be eligible to apply for permission to reapply for admission under section 212(a)(9)(C)(iii) of the Act, she must have remained *outside* the United States for a period of ten years prior to her application.

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.