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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE:

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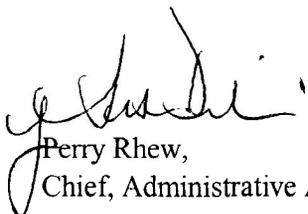
APPLICATION: Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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).


Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, 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 21, 2004, appeared at the San Ysidro, California port of entry. The applicant made an oral claim to U.S. citizenship. The applicant was placed into secondary inspection. The applicant admitted that he was not a U.S. citizen and that he was aware he was making a false claim to U.S. citizenship, which was illegal. The applicant admitted that he did not have valid documentation to enter the United States. The applicant admitted that he had no claim to U.S. citizenship. The applicant failed to provide his true identity to immigration officers. The applicant was found to be inadmissible pursuant to sections 212(a)(6)(C)(ii) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(ii) and 1182(a)(7)(A)(i)(I), for making a false claim to U.S. citizenship and for being an immigrant without valid documentation. On January 22, 2004, 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) under the name [REDACTED]

On July 6, 2006, the applicant married his U.S. citizen spouse in Santa Ana, California. On December 30, 2007, 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 the applicant's behalf by his spouse. On the same day, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212, indicating that he resided in the United States. On September 16, 2008, the Form I-130 was approved and the Form I-485 and Form I-601 were denied.

On October 23, 2008, a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) was issued pursuant to section 241(a)(5) of the Act. The applicant had reentered the United States without inspection in January 2004. On October 23, 2008, the applicant was removed from the United States and returned to Mexico. The appeal reflects that the applicant has reentered the United States without inspection since his removal in 2008. 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 and U.S. citizen child.

The field office director determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for illegally reentering the United States after having been removed. The field office director determined that the applicant was not eligible to apply for permission to reapply for admission because he had not remained outside the United States for the required ten years. The field officer director determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) and that there is no waiver available for this ground of inadmissibility. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated September 16, 2008.

On appeal, counsel contends that the field office director erred in denying the Form I-485 after denying the Form I-212 and Form I-601.¹ Counsel contends that the applicant is eligible to seek adjustment of status under section 245(i) of the Act because he filed the waiver applications prior to reinstatement of the removal order.² Counsel states that the applicant's contention is that he never made a false claim to U.S. citizenship. *See Form I-290B*, dated October 9, 2008. In support of her contentions, counsel submits only the referenced Form I-290B. On the Form I-290B, counsel indicates that she will forward additional evidence and/or a brief within thirty days. The regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to Form I-290B require the affected party to submit the brief or evidence directly to the AAO, not to the Los Angeles, California field office or any other federal office. The record does not contain the brief and/or evidence that counsel indicated would be submitted to the AAO. Even if counsel were to submit evidence that a brief was filed with an office other than the AAO, the AAO would not consider the brief on appeal because counsel failed to follow the regulations or the instructions for the proper filing location. Accordingly the record is complete.

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-

¹ The AAO notes that counsel indicates that the applicant is appealing the denials of the Form I-485, Form I-601 and Form I-212. Counsel failed to file a separate Form I-290B for each application and the applicant is only entitled to an appeal of one application. The AAO has jurisdiction to review denials of applications for adjustment of status filed by aliens seeking the bona fide marriage exemption and aliens in U or T nonimmigrant status. Section 245(e), (l) and (m) of the Act, 8 U.S.C. § 1255(e), (l), (m); 8 C.F.R. §§ 245.1(c)(8)(viii), 245.23(i), 245.24(f)(2). The AAO has no jurisdiction to review denials of applications for adjustment of status under any other provision of the Act, including section 245(a) or 245(i) of the Act. Since the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act and no waiver is available, the applicant could never be eligible for approval of the Form I-601. The AAO, therefore, views the Form I-290B as an appeal of the Form I-212, the only application for which the applicant *may* be eligible to apply.

² The field office director did not err in finding the applicant ineligible to apply for adjustment of status pursuant to section 245(i) of the Act, even though the applicant had made the application prior to reinstatement. *See Gonzales v. DHS (Gonzales II)*, 508 F.3d 1227 (9th Cir. 2007).

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.

While counsel contends that the applicant did not make a false claim to U.S. citizenship, a fingerprint match establishes that the applicant made such a claim and was removed under the name [REDACTED].” The record contains a Sworn Statement of Proceedings Under Section 235(b)(1) of the Act (form I-867A) reflecting that the applicant admitted that he was not a U.S. citizen and that he was aware he was making an oral false claim to U.S. citizenship, which was illegal. The AAO finds that the applicant, by making an oral false claim to U.S. citizenship, on January 21, 2004, is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. 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 adjudicating the application to reapply for admission into the United States under sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(ii) 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.