



U.S. Citizenship
and Immigration
Services

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FILE:

Office: SAN DIEGO, CA

Date:

OCT 06 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)

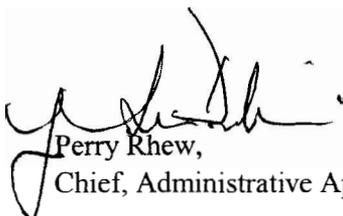
ON BEHALF OF APPLICANT:

Self-represented

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 District Director, San Diego, 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 April 25, 1985, was admitted to the United States as a lawful permanent resident. On December 11, 1992, the applicant was convicted of robbery in violation of section 211 of the California Penal Code. The applicant's sentence was suspended in favor of probation. On December 16, 1996, the applicant was convicted of unlawful taking of a vehicle in violation of section 108551(a) of the California Vehicular Code. The applicant was sentenced to 16 months in jail to run concurrently with an additional two year jail sentence for violating probation in connection with his robbery conviction. On January 5, 1998, the applicant was placed into immigration proceedings as a lawful permanent resident who had been convicted of an aggravated felony. On March 30, 1999, the immigration judge terminated proceedings. USCIS appealed the immigration judge's termination of proceedings to the Board of Immigration Appeals (BIA). On August 11, 2000, the BIA ordered the applicant removed from the United States as a lawful permanent resident convicted of an aggravated felony. The applicant filed a petition of review with the Ninth Circuit Court of Appeals (Ninth Circuit). On November 13, 2000, the Ninth Circuit dismissed the applicant's appeal. The applicant filed a motion to reinstate his petition for review. On January 9, 2001, the Ninth Circuit granted the applicant's motion to reinstate. On May 23, 2001, the Ninth Circuit dismissed the applicant's petition for review. On July 18, 2001, the applicant was removed from the United States and returned to Mexico.

On August 17, 2002, the applicant appeared at the San Ysidro, California port of entry. The applicant made an oral false claim to U.S. citizenship by stating that he was born in the United States. The applicant was placed into secondary inspection. The applicant, in secondary inspection, claimed that he did not state that he was born in the United States, but that he had stated he was born in Mexico and was a derivative citizen through his father, who naturalized while he was a minor; however, the record reflects that the applicant's father did not become a naturalized U.S. citizen until 1989, after the applicant was 18 years of age. The record reflects that the applicant's mother is a native of Mexico who became a lawful permanent resident in 1985 and a naturalized U.S. citizen in 1997. Furthermore, the applicant admitted that he could have become a U.S. citizen through his father, but that he did not apply to become a U.S. citizen. The applicant admitted that he was aware that it was illegal to make a false claim to U.S. citizenship. The applicant admitted that he did not have valid documentation to enter the United States. The applicant admitted that he was aware that he required valid documentation to enter the United States. As such, the applicant was fully aware that he was not a U.S. citizen and was not entitled to enter the United States. 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 August 17, 2002, 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 April 1, 2004, the applicant filed the Form I-212, indicating that he resided in the United States. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) for an indefinite period of time as an aggravated felon. 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 father.

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 office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated June 8, 2009.

On appeal, the applicant's father claims that he filed the Form I-212 on behalf of the applicant and that the applicant has been patiently waiting in Mexico since his removal on August 17, 2002.¹ *See Form I-290B*, dated June 23, 2009. In support of his contentions, the applicant's father submits the referenced Form I-290B and copies of documentation purporting to establish the applicant's residence in Mexico. 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 –

- 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

¹ The AAO notes that an applicant who is inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, must remain outside the United States for a period of ten years before he or she becomes eligible to apply for permission to reapply for admission. The AAO notes that documentation submitted on appeal to establish that the applicant resides in Mexico is insufficient and only evidences presence in Mexico for a few months in 2004 and 2005. The applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude and is ineligible for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h) as a lawful permanent resident who has been convicted of an aggravated felony. Finally, as discussed below, the applicant is otherwise permanently inadmissible.

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.

The AAO finds that the applicant, by making a oral false claim to U.S. citizenship on August 17, 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 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.