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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

H4

[Redacted]

FILE:

[Redacted]

Office: SAN DIEGO, CA

Date: SEP 08 2009

(RELATES)

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: 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).

John F. Grissom,
Acting 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 October 18, 1988, was convicted of receiving stolen property. The applicant was sentenced to five days in jail and three years probation. The applicant subsequently voluntarily returned to Mexico. On January 12, 1993, the applicant was convicted of being under the influence of a controlled substance in violation of section 11550 of the California Health Code (CHC). The applicant was sentenced to 120 days in jail and five years of probation. On November 9, 1996, the applicant married her current U.S. citizen spouse, [REDACTED] in Escondido, California. On October 13, 1998, the applicant appeared at the San Ysidro, California port of entry. The applicant presented a California identity card and orally claimed to have been born in Village, Montana. Immigration officers suspected that the applicant was not a U.S. citizen as she had orally claimed to be. The applicant was placed into secondary inspections. The applicant admitted that she had attempted to enter the United States by claiming to be a U.S. citizen. The applicant admitted that she was aware that it was illegal to attempt to enter the United States by claiming to be a U.S. citizen. 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)(i) 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 October 14, 1998, 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 December 21, 2003, the applicant was convicted of using/being under the influence of a controlled substance in violation of section 11550 of the CHC. The applicant was sentenced to six days in jail and three years probation. The applicant's probation was later modified and the applicant was sentenced to 365 days in jail. On December 24, 2003, the applicant was convicted of disorderly conduct-prostitution in violation of section 647B of the California Penal Code (CPC). The applicant was sentenced to three years of probation and a work program. On September 22, 2008, the applicant filed the Form I-212, indicating that she continues to reside in the United States. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). She 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 and reside with her U.S. citizen spouse and U.S. citizen children.

The district 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 district director denied the Form I-212 accordingly. *See District Director's Decision*, dated January 29, 2009.

On appeal, the applicant contends that she is a person of good moral character and that her husband, mother and children, who all reside in the United States, require her presence in the United States. *See Form I-290B*, dated February 4, 2009. In support of her contentions, the applicant submits the Form I-290B and copies of 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 –

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.

The AAO finds that the applicant, by making an oral false claim to U.S. citizenship on October 13, 1998, 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.