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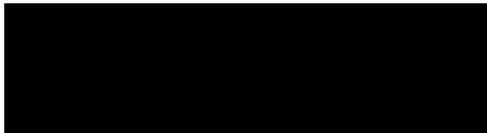
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED] Office: LOS ANGELES, CA

Date **NOV 15 2010**

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:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 whose lawful permanent resident father, on December 30, 1996, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on February 22, 1997. On May 13, 1997, the applicant appeared at the Nogales, Arizona port of entry. The applicant made an oral false claim to U.S. citizenship. The applicant was placed into secondary inspection. The applicant admitted that she had made a false claim to U.S. citizenship. The applicant admitted that she was not a U.S. citizen and that she did not have valid documentation to enter the United States. The applicant admitted that she had resided in the United States for the previous ten years. 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 May 13, 1997, 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 January 18, 2008, the applicant filed the Form I-212 indicating that she resided in the United States. The applicant admitted in a statement attached to the Form I-212 that she reentered the United States without inspection. The Form I-212 indicates that the applicant has been residing in the United States since 1988. 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 lawful permanent resident father and two U.S. citizen children.

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 she 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 August 15, 2009.

On appeal, the applicant contends that she is unfamiliar with immigration law and proceedings and did not have counsel. The applicant contends that her ignorance caused her to forgo an important right to apply for the benefit of a waiver that was available to her under the law.<sup>1</sup> The applicant contends that she is entitled to a waiver pursuant to sections 212(a)(6)(F) and 274C of the Act, 8 U.S.C. §§ 1182(a)(6)(F) and 1324C, and 22 C.F.R. § 40.66.<sup>2</sup> The applicant contends that she made

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<sup>1</sup> The AAO notes that the applicant was not eligible for any waiver at the time she was removed from the United States. While the AAO notes the applicant's assertion on appeal that she was entitled to counsel at the time of her removal from the United States, the AAO has no authority to review the decision to remove the applicant.

<sup>2</sup> The AAO finds that these sections of the Act and federal regulations do not relate to the sections of the Act under which the director found the applicant to be inadmissible. These sections of the Act and federal regulations refer to only civil monetary penalties in relation to using fraudulent documents and to aliens subject to a final order of removal pursuant to section 274C of the Act. The applicant is not subject to a final order of removal pursuant to section 274C of

a timely retraction of her false claim to U.S. citizenship.<sup>3</sup> The applicant contends that she warrants a favorable exercise of discretion. *See Applicant's Brief*, undated. In support of her contentions, the applicant submits the referenced brief, educational documentation, financial documentation and identity documents for her children. 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 of an alien convicted of an aggravated felony) is inadmissible.

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the Act and these sections of the Act and regulations do not have a bearing on whether the applicant is eligible for permission to reapply for admission.

<sup>3</sup> 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-I- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel*, 18 I&N 33 (BIA 1984). The applicant contends that she 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 the applicant, 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.

- (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 of Homeland Security] has consented to the alien's reapplying for admission.

....

(C) Aliens unlawfully present after previous immigration violations.-

- (i) In general.-Any alien who-

- (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

- (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

- (ii) Exception.

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

- (iii) Waiver

The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

- (I) the alien's battering or subjection to extreme cruelty; and

- (II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

The AAO notes that a waiver to section 212(a)(9)(C)(i) ground of inadmissibility is available to individuals classified as battered spouses under the cited sections of section 204 of the Act. *See also* 8 U.S.C. § 1154. There are no indications in the record that the applicant is or should be classified as such.

An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless he or she has *remained outside* the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States since that departure, *and* that U.S. Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission. In the present matter, while the applicant's last departure from the United States occurred on May 13, 1997, more than ten years ago, she has not remained outside the United States for the required ten years and she is currently present in the United States. The applicant is currently statutorily ineligible to apply for permission to reapply for admission.<sup>4</sup>

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. The applicant in the instant case does not qualify for a waiver or the exception under section 212(a)(9)(C)(ii) of the Act. Thus, as a matter of law, the applicant is not eligible for approval of a Form I-212. Accordingly, the appeal will be dismissed as a matter of discretion.

Beyond the decision of the field office director, the AAO finds that the applicant is inadmissible under the provisions of section 212(a)(6)(C)(ii) of the Act and no waiver is available. Therefore, the applicant is mandatorily inadmissible to the United States and no purpose would be served in the favorable exercise of discretion in adjudicating an application to reapply for admission into the United States.<sup>5</sup>

**ORDER:** The appeal is dismissed.

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<sup>4</sup> The applicant will be required to submit evidence establishing that she is currently outside the United States and has remained outside the United States for a period of ten years when she becomes eligible to apply for permission to reapply for admission.

<sup>5</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).