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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H4

Date: JUN 07 2011 Office: TUCSON, AZ FILE: [redacted]

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:

[redacted]

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, with a fee of $630. 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, Tucson, Arizona, 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 27, 2000, was admitted to the United States as a lawful permanent resident. On May 1, 2003, the applicant appeared at the Nogales, Arizona 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 claimed to be a U.S. citizen even though he was not a U.S. citizen and did not have any claim to U.S. citizenship. The applicant admitted that he knew it was illegal to claim to be a U.S. citizen. The applicant stated that he did not have any status in the United States and that his parents were Mexican citizens with no legal status in the United States. The applicant admitted that he did not have valid documentation to enter the United States. The applicant failed to provide his true identity to immigration officers. 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 May 1, 2003, 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 "Jesus Rubelen Siavdia Srius."

On July 20, 2003, the applicant appeared at the Nogales, Arizona 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 claimed to be a U.S. citizen even though he was not a U.S. citizen and did not have any claim to U.S. citizenship. The applicant admitted that he knew it was illegal to claim to be a U.S. citizen. The applicant stated that he did not have any status in the United States and that his parents were Mexican citizens with no legal status in the United States. The applicant admitted that he did not have valid documentation to enter the United States. The applicant admitted that he had previously made a false claim to U.S. citizenship and had been removed from the United States under the name [redacted] The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, for making a false claim to U.S. citizenship. On July 20, 2003, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act.

On December 18, 2006, immigration officers apprehended the applicant close to the port of entry. The applicant admitted that he had previously claimed to be a U.S. citizen and had last entered the United States by crossing the fence approximately one mile away from his point of apprehension. The applicant admitted that he knew he had been removed from the United States and that it was illegal for him to reenter the United States. The applicant stated that his parents had never resided in the United States and had no status in the United States. The applicant was found to be inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I) for being an immigrant without valid documentation. On December 18, 2006, 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 June 6, 2009, 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 on June 5, 2009. The applicant claimed that he had legal status in the United States but he did not have any evidence of his legal status in the United States. On June 6, 2009, the applicant was removed from the United States and returned to Mexico.

On December 3, 2009, the applicant presented himself at the Nogales Arizona port of entry. The applicant claimed to be a returning lawful permanent resident. The applicant's inspection was deferred. On July 12, 2009, 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)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) for a period of twenty years. 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 naturalized U.S. citizen mother.

The field office 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 October 22, 2010.

On appeal, counsel contends that the applicant has disabilities which contributed to his removal from the United States; the applicant is still a lawful permanent resident; and the applicant's due process rights were violated.[1] *See Counsel's Brief.* In support of his contentions, counsel submits the referenced brief, psychological documentation, educational documentation, affidavits, letters of recommendation and copies of documentation already in the record. 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. –
>
> 1. 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.
>
> 2. 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] While the AAO notes counsel's assertion on appeal that the applicant's removal from the United States was unconstitutional because he was not provided a hearing under section 240(a)(3) of the Act, the AAO has no authority to review the decision to remove the applicant.

> 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).

On appeal, counsel contends that the applicant is still a lawful permanent resident because federal law requires a judicial order to remove or deport a legal permanent resident. Counsel's contention is unpersuasive. The regulation at 8 C.F.R. 1.1(p) provides that lawful permanent resident status terminates upon entry of a final administrative order of exclusion, deportation or removal. While counsel contends that the applicant should have lawful permanent resident status even though he has been removed several times because he was removed without the protections of section 240(a)(3) of the Act, the executed removal orders and the reinstatement of those removal orders terminated the applicant's lawful permanent resident status because they are final administrative orders of exclusion, deportation or removal. *See Lorenzo v. Mukasey*, 508 F. 3d 1278 (10th Cir. 2007). Counsel fails to provide any precedent case law to support his contentions.

Counsel contends that the applicant had no intention to benefit from making a false claim to U.S. citizenship and section 212(a)(6)(C) of the Act "requires fraud and willful misrepresentation or false representation for purpose or benefit." Counsel contends that the applicant was not attempting to deceive but stated that he was a U.S. citizen because he thought it to be the truth. Counsel contends that the applicant's disabilities combined with failure to receive his lawful permanent resident card led to the applicant's inability to understand immigration law, show proof of his status or answer questions and explain himself in interrogation. Counsel's contentions are unpersuasive. Section 212(a)(6)(C)(ii) of the Act requires an alien's false representation of himself as a U.S. citizen for any purpose or benefit under the Act. The record clearly reflects that the applicant was aware that he was not a citizen, he made no claim to legal status in the United States for himself or his parents and he utilized an alias which was not, as counsel claims it to have been, an innocent mix of his and his parents' names. The record clearly reflects that the applicant was fully aware that he was making a false claim to U.S. citizenship and that only one of his parents is a U.S. citizen.

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 oral false claims to U.S. citizenship on May 1, 2003 and July 20, 2003, 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 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.

Beyond the decision of the field office director, the AAO finds that the applicant is inadmissible under the provisions of section 212(a)(9)(C)(i)(II) of the Act and does not qualify for a waiver or the exception under section 212(a)(9)(C)(ii) and (iii) of the Act. Therefore, the applicant is statutorily ineligible to apply for permission to reapply for admission into the United States.[2]

**ORDER:** The appeal is dismissed.

[2] 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 (9th 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).