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



**U.S. Citizenship
and Immigration
Services**



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DATE: **FEB 21 2012**

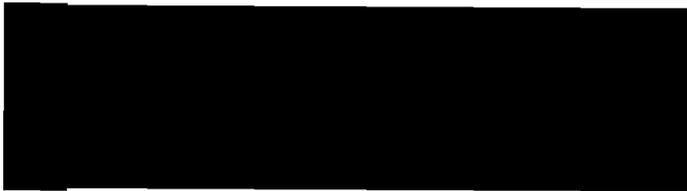
OFFICE: SAN FRANCISCO, CA

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:



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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, California denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal. On appeal, the Administrative Appeals Office (AAO) withdrew the Field Office Director's decision and remanded the matter for entry of a new decision. The Field Office Director issued a new decision, certifying it to the AAO. Upon review, the AAO returned the matter for entry of a certification notice. The Field Office Director's subsequent decision is now before the AAO on certification. The AAO will withdraw our prior decisions in this matter. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been ordered removed from the United States and thereafter entering the United States without being admitted. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii) in order to reside in the United States.

The Field Office Director determined that the applicant was subject to section 212(a)(9)(C)(i)(II) of the Act and was not eligible to submit the Form I-212. She denied the application accordingly. *See Field Office Director's Decisions*, dated July 10, 2009, November 24, 2010 and March 15, 2011. On appeal, the AAO found the applicant inadmissible pursuant to section 212(a)(9)(A)(ii)(I), 8 U.S.C. § 1182(a)(9)(A)(ii)(I), but concluded that no purpose would be served in considering the Form I-212 as his admission to the United States was also barred by section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for having made a false claim to U.S. citizenship, an inadmissibility for which no waiver was available. *Administrative Appeals Office Chief's Decisions*, dated April 20, 2010, and December 27, 2010.

On appeal, counsel contends that the applicant did not make a false claim to citizenship and is, therefore, not inadmissible pursuant to section 212(a)(6)(C)(ii). She also asserts that section 212(a)(9)(C)(i)(II) of the Act does not apply to the applicant. *Applicant's Brief in Support of AAO Review of Certified Decision*, dated May 13, 2011.

In support of the applicant's request for permission to reapply, the record includes, but is not limited to: counsel's briefs; statements from the applicant and his spouse; letters of support from the applicant's and his spouse's families; tax returns, W-2 Wage and Tax Statements, and earnings statements for the applicant and his spouse; school records for one of the applicant's sons; and a loan approval notice. The entire record has been reviewed and all pertinent evidence considered in reaching a decision on the appeal.

Section 212(a)(9)(C) of the Act provides:

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

(i) In general.-Any alien who-

....

(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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

Prior to considering the applicant's application, the AAO finds it appropriate to review the history of the present matter, which began on May 30, 2001 when the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On February 4, 2002, United States Citizenship and Immigration Services (USCIS) denied the Form I-485, based on its determination that the applicant was inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act for having made a false claim to U.S. citizenship and section 212(a)(9)(C)(i)(II) for having been ordered removed on January 16, 1997 by an immigration judge and reentering the United States without inspection. On February 7, 2002, the applicant was placed in removal proceedings, where, on June 7, 2006, an immigration judge granted him adjustment of status, finding that the applicant had conceded inadmissibility pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been ordered removed from the United States and thereafter entering without being admitted, but was not inadmissible under section 212(a)(6)(C)(ii) of the Act for having made a false claim to citizenship.

The Department of Homeland Security appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). The BIA issued its decision on June 28, 2007, finding no error in the immigration judge's determination that the applicant had not made a false claim to citizenship. The BIA also noted that the immigration judge had sustained the charge of inadmissibility under section 212(a)(9)(C)(i)(II) of the Act and remanded the issue of the applicant's eligibility for *nunc pro tunc* permission to reapply under section 212(a)(9)(C)(ii) of the Act for her consideration. On March 18, 2009, the immigration judge determined that the applicant was permanently inadmissible under section 212(a)(9)(C)(i)(II) of the Act and was not eligible to apply for relief. On or about March 26, 2009, the applicant filed an appeal with the BIA, which was dismissed on February 1, 2011.

Pursuant to section 103(a)(1) of the Act, 8 U.S.C. § 1103(a)(1):

(1) The Secretary of Homeland Security shall be charged with the administration and enforcement of this Act and all other laws relating to the immigration and naturalization of aliens, except insofar as this Act or such laws relate to the power, functions, and duties conferred upon the President, Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers; *Provided, however*, that determination and ruling by the Attorney General with respect to all questions of law shall be controlling.

As set forth in our prior decisions, the AAO has previously found that the applicant is not inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act. Instead, we have determined that his inadmissibility is based on his violations of section 212(a)(6)(C)(ii) of the Act, having made a false claim to citizenship; and section 212(a)(9)(A)(ii)(I) of the Act, having been ordered removed from the United States and seeking admission within ten years of his departure. These findings conflict with those reached by the immigration judge and BIA in the present case.

While the AAO has previously indicated that we were not bound by the unpublished, non-precedent decisions issued by the immigration judge and BIA, and, therefore, free to reach our own conclusions regarding the nature of the applicant's inadmissibility, such reasoning has ignored the fact that the case before the immigration judge was the applicant's own case and that no change in fact or law supported our further review. We now acknowledge the Attorney General's controlling authority in this matter and defer to the immigration judge's decisions of June 7, 2006 and March 18, 2009, which have found the applicant to be inadmissible to the United States **solely** on the basis of his violation of section 212(a)(9)(C)(i)(II) of the Act and that he is ineligible to apply for relief under section 212(a)(9)(C)(ii) of the Act.

Accordingly, the AAO will withdraw our decisions of April 20 and December 27, 2010, which have found the applicant to be inadmissible pursuant to sections 212(a)(6)(C)(ii) and 212(a)(9)(A)(ii)(I) of the Act. We will also dismiss the applicant's appeal as no purpose would be served by considering it in light of the immigration judge's determination that he is ineligible for relief.

ORDER: The prior decisions of the AAO are withdrawn. The appeal is dismissed.