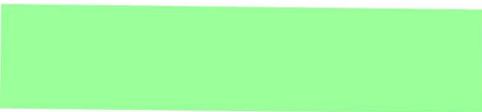


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090

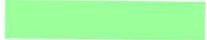


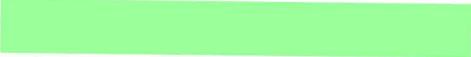
**U.S. Citizenship
and Immigration
Services**



Date: **JUL 22 2013**

Office: FRESNO

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Acting Field Office Director, Fresno, California, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying application denied.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), as an alien removed from the United States who subsequently reentered the country without being admitted. She is the beneficiary of an approved Petition for Alien Relative (Form I-130), and 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 her lawful permanent resident spouse.

The acting field office director determined that the applicant was ineligible to apply for permission to reapply for admission until such time as she had remained outside the United States for a period of 10 years, and denied the Form I-212 accordingly. *See Acting Field Office Director's Decision*, April 9, 2012. On appeal, the AAO found that the applicant is also inadmissible under section 212(a)(6)(C)(ii) of the Act for having made a false claim of U.S. Citizenship when she declared to an immigration official that she was born in the United States. *Decision of the AAO*, January 30, 2013.

On motion to reconsider, the applicant's counsel asserts the AAO erred in dismissing the appeal on grounds different from the basis of the original Form I-212 denial by finding the applicant to have falsely represented herself to be a U.S. citizen. In support of the motion, the applicant's counsel submits a brief contending that the applicant's misrepresentation does not fall within section 212(a)(6)(C)(ii) of the Act, and thus is no bar to consideration of the request for permission to reapply for admission, and further that she qualifies for such permission despite being present in the United States. The record consists of the brief submitted by counsel, the Form I-212 and supporting documents, the appeal of the Form I-212 denial, and documents pertaining to the applicant's expedited removal. The entire record was reviewed and considered in rendering this decision.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). It was thus appropriate to find, upon reviewing the entire record, another basis for the Form I-212 denial not identified by the acting field office director. Counsel asserts that the applicant's false U.S. citizenship claim does not come within the permanent bar intended by Congress, but fails to show that the circumstances of her U.S. citizenship claim preclude a finding of inadmissibility under section 212(a)(6)(C)(ii) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

....

- (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 (including section 274A) or any other Federal or State law is inadmissible.

The record establishes that on April 20, 2000, the applicant sought to enter the United States at the Calexico, California port of entry by stating that she was born in the United States. Upon secondary inspection, she was found to lack documentation needed for U.S. admission, and thus was referred to the port enforcement team (PET) for removal proceedings. While in the PET office, she stated she was a Mexican citizen without required documentation to enter the United States, and admitted having initially claimed to be “American born” to procure U.S. admission. *See Form I-867A, Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act*, April 20, 2000. She was found to be inadmissible under section 212(a)(6)(C)(ii) and removed from the United States on the same day pursuant to an order of expedited removal under section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). *See Form I-213, Record of Deportable/Inadmissible Alien*. She subsequently reentered the United States without inspection or parole on an unspecified date and has remained in the United States.

Authority cited by counsel fails to establish that the applicant’s assertion to an immigration official at the port of entry that she was an American by virtue of birth in the United States is insufficient to constitute a false claim to U.S. citizenship. *See Valadez-Munoz v. Holder*, 623 F.3d 1304 (9th Cir. 2010). While counsel contends that *Valadez-Munoz* shows that a false oral statement is less strong than a written statement that is signed, we note that the court therein left no doubt about the sufficiency of false citizenship claims that are not signed:

The evidence of his claim of citizenship is not quite as strong as it would have been if Valadez had actually signed a statement admitting that he had falsely claimed citizenship, or pled guilty to the crime of so doing. Nevertheless, it cannot be said that the BIA’s determination that Valadez intended to and did make a false claim of United States citizenship at that time was so unfounded that no “reasonable factfinder” could so determine. *Elias-Zacarias*, 502 U.S. at 481, 112 S.Ct. at 815. Indeed, in this civil proceeding we are almost asked to take a flight of fancy when we are asked to believe that Valadez was not asserting citizenship at that time.

....

The strongest riposte to Valadez’s thrust is the very fact that the cases cited were criminal prosecutions where the defendant had to be found guilty beyond a reasonable doubt and we, therefore, were very concerned about the quality of the evidence. Here, on the other hand, the burden of persuasion is reversed for, again, the alien has the burden of proving that he is not inadmissible “clearly and beyond doubt.” 8 U.S.C. § 1229a(c)(2)(A). That makes all the difference in the world. Valadez was required to clearly show that he was not inadmissible, and he did not offset the strong inference that his activities at the border constituted a claim of United States citizenship.

....

Here Valadez did not recant until he knew that his false representations would not succeed in getting him admitted into the country. [footnotes omitted]
Id. at 1308-1309.

Likewise, the applicant herein bears the burden of proving admissibility and, similarly, has shown neither that her U.S. citizenship claim was insufficient for being made verbally nor that her truthful admission when she later faced imminent removal negated her original false claim.

Finally, as counsel repeats the argument that the false citizenship claim should be disregarded as tainted by regulatory shortcomings in the conduct of the interview without providing any new authority, there is no basis for disturbing our finding on appeal that the safeguards claimed to have been denied do not apply where the applicant was subject to expedited removal proceedings. As we previously noted, “[o]n appeal, counsel cites the case of *Rodriguez-Echeverria v. Gonzalez* (sic), [*Rodriguez-Echeverria v. Mukasey*, 534 F.3d 1047(9th Cir. 2008)], and contends that under 8 C.F.R. § 287.3(c), the Government is required to ‘advise an alien of their right to counsel and that any statements that they may make may be used against them when such alien is arrested and prior to any interrogation by the Government.’ However, the AAO notes that the applicant was removed pursuant to an order of expedited removal under section 235(b)(1) of the Act. The provisions of 8 C.F.R. § 287.3(c) clearly state that this regulation does not apply in the case of an alien subject to the expedited removal provisions of section 235(b)(1)(A) of the Act.” *Decision of the AAO*, January 30, 2013.

The applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act. No waiver is available to an alien who has falsely represented himself or herself to be a citizen of the United States, and *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. Thus, 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 Form I-212 was properly denied.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The waiver application remains denied.