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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

Date: JUN 04 2013 Office: PORTLAND, OR 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)(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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino, 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 record reflects that the applicant is a native and citizen of Mexico who was found inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). The record also shows that the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act for making a false claim to U.S. citizenship. 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 United States citizen spouse.

The field office director determined that the applicant was inadmissible pursuant to section 212(a)(9)(C) of the Act and denied the Form I-212 accordingly. *See Field Office Director's Decision,* May 18, 2012.

On appeal, counsel for the applicant asserts that the applicant filed his application for adjustment in reliance on decisions of the Ninth Circuit Court of Appeals at the time of his application, and that the AAO should hold this decision in abeyance until a decision on a pending case relating to section 212(a)(9)(C) of the Act retroactivity is issued from the Ninth Circuit.

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 U.S. 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.

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act.

> In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made <u>before</u> the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official.

If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

Section 212(a)(9) of the Act states in pertinent part:

....

(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 has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

The record indicates that the applicant attempted to enter the United States on March 27, 1999, by presenting an Oregon driver's license and claiming he was a U.S. citizen. *Notice and Order of Expedited Removal*, Form I-860, dated March 27, 1999. He was detained, found inadmissible pursuant to section 212(a)(6)(C)(ii)(I) of the Act, entered into removal proceedings and returned to Mexico pursuant to section 235(b)(1), rendering him inadmissible for a period of five years under section 212(a)(9)(A)(i) of the Act. The applicant then re-entered the United States without inspection and has been residing in the United States since on or before 2001. The applicant previously resided in the United States from 1991 until sometime time prior to his departure and attempt to re-enter on March 27, 1999. As the applicant was removed pursuant to section 235(b)(1), and then re-entered the United States without inspection within five years, he is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act.[1]

In this case, the applicant attempted to enter the United States on March 27, 1999, after presenting an Oregon driver's license due to claiming to be a U.S. citizen. As such, he is also inadmissible pursuant to section 212(a)(6)(C)(ii)(I) of the Act. There is no waiver for this provision.

The applicant is inadmissible under section 212(a)(6)(C)(i)(II) of the Act. As such, no purpose would be served in approving the present Form I-212 application, as the applicant would remain inadmissible pursuant to section 212(a)(6)(C)(i)(II) of the Act. Further, no purpose would be served in reaching counsel's assertions regarding the retroactive application of section 212(a)(9)(C) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[1] In addition, the AAO notes that it is likely the applicant is also inadmissible under section 212(a)(9)(C)(i)(I) for having re-entered the United States without admission after a period of unlawful presence over one year, from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until his departure from the United States sometime in February or March 1999.