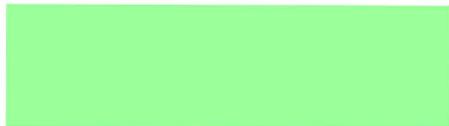




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **SEP 04 2013**

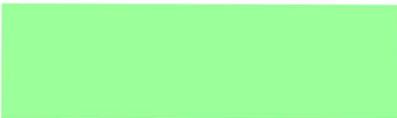
OFFICE: ATLANTA

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 (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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Atlanta, Georgia 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 to be 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 entered the United States without admission after removal from the United States. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii), 8 U.S.C. §§ 1182(a)(9)(A)(iii), in order to reside in the United States with his spouse and children.

The Field Office Director determined that the applicant is subject to section 212(a)(9)(C)(i)(II) of the Act and has not remained outside the United States for ten years following his last departure, and denied the applicant's Form I-212 accordingly. *See Decision of Field Office Director*, dated August 23, 2012.

On appeal, counsel for the applicant asserts that the applicant is not subject to the provisions of section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), because the deportation order against him was vacated. The entire record was reviewed and considered in rendering this decision.

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.

(b)(6)

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

(C) Misrepresentation. –

.....

(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 applicant was ordered deported from the United States by an immigration judge on June 23, 1994 based on the applicant's entry into the United States without inspection on or about May 20, 1994. The applicant was deported from the United States on June 23, 1994.

The applicant attempted to enter the United States on or about June 19, 1998, by claiming to be a citizen of the United States and presenting a birth certificate belonging to another individual. The applicant was ordered removed by an immigration officer and departed from the United States on June 19, 1998. Section 235(b)(1)(A)(i) of the Act grants immigration officers the authority to issue expedited orders of removal for certain aliens who have not been admitted or paroled. The applicant subsequently entered the United States without admission or parole and married his spouse in the United States on the next day, June 20, 1998.

Counsel for the applicant asserts that the applicant's 1994 deportation order was vacated due to a class action settlement and that the applicant cannot be recharged for the behavior that was the basis for the original charge. The applicant submitted a vacatur of final order document, dated June 13, 2001, stating that the 274C final order issued against the applicant is vacated under a settlement agreement. The applicant also submitted a memorandum from the Immigration and Naturalization Service, dated August 21, 2001, stating that the settlement class members will not be recharged under section 274C of the Act, or as deportable or inadmissible, for the same conduct.

The record contains a final order of civil document fraud against the applicant, dated June 1, 1994. The final order, based upon allegations that the applicant presented a counterfeit social security card to obtain a Texas identification card, fines the applicant 500 dollars pursuant to section 274C of the Act. There is no evidence that the applicant's June 1994 order of deportation was based upon the allegations contained in his June 1, 1994 final order of civil document fraud. Further, it is clear that the vacatur order refers to the applicant's civil document fraud order, not his deportation or removal order. In addition, the applicant's subsequent removal order is based solely upon a false claim of citizenship in 1998.

Accordingly, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii)(I) of the Act for making a false claim of U.S. citizenship to an immigration officer

in order to gain admission to the United States. The applicant is also inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for entering the United States without admission or parole subsequent to a removal order.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than ten 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). 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 and USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant is currently residing in the United States and remained outside for approximately a day after his last departure from the United States. Based upon this ground of inadmissibility, the applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Regardless, the applicant is also admissible to the United States pursuant to section 212(a)(6)(C)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii)(I), for making a false claim to United States citizenship on June 19, 1998. As there is no waiver available for this ground of inadmissibility, the applicant's Form I-212 would be properly denied as a matter of discretion. *Matter of J- F- D-*, 10 I&N Dec. 694 (Reg. Comm. 1963).

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed