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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: DEC 0 8 2014 OFFICE: IMPERIAL File: consolidated therein)

IN RE: Applicant:

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

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, Imperial, denied the Form I-212, 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 the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States 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 having falsely represented herself as a citizen of the United States. The record also reflects the applicant was found to be inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for having been unlawfully present in the United States for an aggregate period of more than one year and for having been ordered removed, and re-entering the United States within the proscribed period. The applicant, through counsel, contests the finding of inadmissibility under section 212(a)(6)(C)(ii), and in the alternative, seeks permission to reapply for admission into the United States in order to reside with her spouse and children in the United States.[1]

The Field Office Director determined the applicant is permanently inadmissible, as a waiver is not available for an inadmissibility under section 212(a)(6)(C)(ii) of the Act. The Field Office Director also determined the applicant has not remained outside the United States for the proscribed period and denied the Form I-212 accordingly. *See Decision of the Field Office Director*, dated April 9, 2014.

On appeal, counsel asserts the applicant did not orally make a false claim to U.S. citizenship in order to obtain an immigration benefit and though she presented a U.S. birth certificate as her own, she timely retracted any false claim. Counsel also asserts U.S. Citizenship and Immigration Services (USCIS) failed to provide documentary evidence of the applicant having been removed from the United States on more than one occasion. *See Form I-290B, Notice of Appeal or Motion*, dated May 5, 2014; *see also Brief in Support of the Appeal.*

The record includes, but is not limited to: briefs; correspondence; affidavits by the applicant; documents concerning identity and relationships; and academic, employment and financial documents. The record also contains documents in the Spanish language. 8 C.F.R. § 103.2(b)(3) states:

> Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

[1] The applicant, on her Form I-212, indicates she seeks permission to reapply for admission to the United States as she is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), because of her 1999 expedited-removal under section 235(b)(1) of the Act. The record, however, also reflects the applicant subsequently re-entered the United States without authorization. Although the Field Office Director determined the applicant is inadmissible under section 212(a)(9)(C)(i), the record does not indicate that she made a separate finding of inadmissibility under section 212(a)(9)(A)(i) of the Act.

Without certified translations as required by 8 C.F.R. § 103.2(b)(3), these foreign-language documents cannot be considered on appeal. The entire record, with the exception of the Spanish-language documents, was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6) of the Act provides:

> (C) Misrepresentation.-
>
> > (i) In general.- 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.-
> >
> > > (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.
> > >
> > > (II) Exception.- In the case of an alien making a representation described in subclause (I), if each natural parent 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 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).

The record reflects that the applicant presented to a U.S. immigration official a U.S. birth certificate that did not belong to her upon seeking admission at the Calexico Port of Entry on February 25, 1999. The birth certificate identified the applicant with a different identity, date of birth, and her birthplace as , California. The record also reflects during secondary inspection, the applicant attested, using an alias, that she paid an individual in Mexico 800 pesos for the birth certificate, she understood that gaining entry into the United States in this manner was a violation of U.S. law, and she "only wanted to see if [she] could cross with the birth certificate so [she] could use it later."

We find counsel's contention that the applicant is not inadmissible under section 212(a)(6)(C)(ii) of the Act because she did not orally claim to be a U.S. citizen to be unpersuasive. Counsel does not cite to statutory or other legal authority requiring an individual to orally make a false claim to U.S. citizenship to be found inadmissible under 212(a)(6)(C)(ii) of the Act. The applicant's act of

presenting the birth certificate when seeking admission to the United States qualifies as a representation that she was the individual whose name appeared in that certificate, a U.S. citizen. Accordingly, the record reflects that the applicant willfully misrepresented herself as a U.S. citizen to procure an immigration benefit under the Act, namely, admission to the United States. Moreover, prior to September 30, 1996, aliens obtaining or seeking to obtain benefits under the Act by falsely claiming to be U.S. citizens were inadmissible under section 212(a)(6)(C)(i) of the Act. Section 212(a)(6)(C)(ii) of the Act applies only to false claims to U.S. citizenship made on or after September 30, 1996. *See Memorandum from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, "Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators,"* dated March 3, 2009. The record reflects that the applicant presented the U.S. birth certificate on February 25, 1999.

However, a timely retraction will serve to purge a false representation of U.S. citizenship and remove it from further consideration as a ground for section 212(a)(6)(C) eligibility. *See, e.g., 9 FAM 40.63 N4.6*. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.*

The record reflects the applicant had no intention of revealing her true identity or citizenship when she presented the U.S. birth certificate that did not belong to her. She admitted that the information contained in the birth certificate was false and to her true citizenship only after being placed in secondary inspection. Therefore, the applicant cannot be said to have been acting timely to purge the misrepresentation of her citizenship. The applicant provides no additional evidence on appeal to support her assertions that she timely recanted her false claim to U.S. citizenship.

The Act makes clear that a foreign national must establish admissibility "clearly and beyond doubt." *See* section 235(b)(2)(A) of the Act. *See* also 240(c)(2)(A) of the Act. The same is true for admissibility in the context of an application for adjustment of status. See *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008). *See Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008); *see also Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). Based on the foregoing, the applicant was correctly found to have made a false claim to U.S. citizenship, and thereby, she is inadmissible under 212(a)(6)(C)(ii)(I) of the Act. The record does not reflect that the applicant meets the requirements for an exception to inadmissibility as stated in 212(a)(6)(C)(ii)(II). Further, we find that the Act includes no provisions for a waiver of inadmissibility under section 212(a)(6)(C)(ii) of the Act.

As mentioned previously, the record reflects the applicant also was determined to be inadmissible under section 212(a)(9)(C)(i) of the Act for having reentered the United States without authorization after having been unlawfully present in the United States for an aggregate period in excess of one year and after having been removed pursuant to an order under section 235(b)(1) of the Act. However, as the applicant is statutorily ineligible for a waiver, we will not consider her inadmissibilities under section 212(a)(9)(C)(i) 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. As the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act and no waiver is available, no purpose would be served in granting the applicant's Form I-212.

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.