

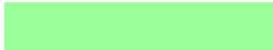


**U.S. Citizenship
and Immigration
Services**

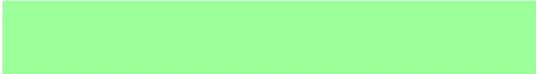
(b)(6)



DATE: **FEB 10 2014** Office: SAN BERNARDINO

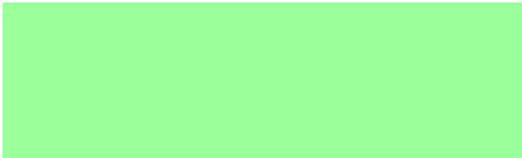


IN RE: Applicant:



APPLICATION: Application for Permission to Reapply for Admission under section 212(a)(9)(A)(iii) the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii) and section 212(a)(9)(C)(ii) of the 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,

f. Ron Rosenberg

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino, California denied the application for permission to reapply for admission, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who attempted to enter the United States using a fraudulent U.S. birth certificate on March 3, 1998 and was removed on March 7, 1998. He reentered the United States without inspection or parole sometime later in March 1998 and has not departed. He was found to be inadmissible to the United States under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii). He is also inadmissible under section 212(a)(9)(A)(i) the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for seeking admission after expeditious removal, and under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for reentry without inspection after removal. The applicant is seeking permission to reapply for admission in order to reside in the United States with his U.S. citizen father and children.

The field office director concluded the applicant's false citizenship claim subjects him to a ground of inadmissibility for which no waiver is available and, accordingly, denied the Application for Permission to Reapply for Admission to the United States after Deportation or Removal (Form I-212). *Decision of Field Office Director*, January 24, 2013.

On appeal, the applicant's counsel asserts that the denial decision erred as a matter of law by failing to apply the "exceptional and extremely unusual hardship" standard regarding the applicant's father. In support of the appeal, counsel submits a legal brief dated March 21, 2013. The record also contains documentation submitted in support of the original request for permission to reapply for admission. The entire record was reviewed and considered in rendering this decision.

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

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.

Section 212(a)(6)(C)(ii) provides, in pertinent part:

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.

Section 212(a)(6)(C)(iii) provides, "For provision authorizing waiver of clause (i), see subsection (i)," but does not provide for a waiver for violations falling under section 212(a)(6)(C)(ii) of the Act. Section 212(i) provides a waiver to aliens found inadmissible under section 212(a)(6)(C)(i), but the applicant is inadmissible under 212(a)(6)(C)(ii) for making a false claim to citizenship, and no waiver is available to such an individual.

According to the record, the applicant was removed pursuant to section 235(b)(1) of the Act on March 7, 1998 after attempting to procure entry to the United States on March 3, 1998 by presenting a false U.S. birth certificate to a U.S. immigration inspector at the port of entry.¹

The record establishes that the applicant remains inadmissible under section 212(a)(6)(C)(ii) of the Act for seeking entry to the United States by presenting a California birth certificate as his own. Because he made this false claim to U.S. citizenship on March 3, 1998, the applicant is permanently inadmissible under section 212(a)(6)(C)(ii) of the Act.²

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.

The applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act. As no waiver is available to an alien who falsely claims to be a U.S. citizen, no purpose would be served by the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii).³ Where the applicant is statutorily inadmissible to the United States, the field office director properly denied the 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, the applicant has not met that burden. Accordingly, the appeal of the field office director's denial of the Form I-212 is dismissed.

ORDER: The appeal is dismissed.

¹ On a subsequent Application to Register Permanent Residence or Adjust Status (Form I-485), the applicant admits entering the country without inspection or parole later that same month.

² Section 212(a)(6)(C)(ii) applies to false citizenship claims made on or after the September 30, 1996 date of enactment of IIRAIRA.

³ As he is currently residing in the United States, the applicant is ineligible to seek permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act.