



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 11 2014 OFFICE: HARLINGEN

IN RE:

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:

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, Harlingen, Texas denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the matter 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 is inadmissible to the United States pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). She 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 her spouse and children.

The Field Office Director determined that the applicant is subject to section 212(a)(6)(C)(ii) of the Act for falsely claiming United States citizenship and denied the applicant's Form I-212 accordingly. *See Decision of Field Office Director*, dated July 1, 2013.

On appeal, counsel for the applicant asserts that the application should not be subject to section 212(a)(6)(C)(ii) of the Act because she entered the United States to return to her husband and home rather than gain an immigration benefit. The entire record was reviewed and considered in rendering this decision.

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 record indicates that the applicant attempted to enter the United States using the United States birth certificate and Texas driver's license belonging to another individual on June 25, 2007. The applicant was removed from the United States on the same date for falsely claiming United States citizenship pursuant to section 212(a)(6)(C)(ii) of the Act.

Counsel for the applicant asserts that the applicant is not subject to the bar under section 212(a)(6)(C)(ii) of the Act. Counsel cites *Castro v. Attorney General*, 671 F.3d 356 (3rd Cir. 2012), and contends that the applicant's undocumented status does not create an assumption that she made a false claim to U.S. citizenship for a purpose or benefit under the Act. In *Castro v. Attorney General*, a petitioner made a false claim to U.S. citizenship to a local police officer. The Third Circuit determined that as the police testified that the false claim was immaterial to them, the police could confer no immigration benefit, and minimizing the risk of being reported for

immigration enforcement does not constitute a legal benefit, there was no indication that the petitioner had claimed false citizenship for a benefit. *Id.*

Unlike the petitioner in *Castro*, the applicant made a false claim to U.S. citizenship at a port of entry, in order to gain admission into the United States. It is noted that the Third Circuit, in *Castro*, states that it is relatively straightforward to view obtaining entry into the United States as a benefit under federal law. *Castro v. Attorney General*, 671 F.3d 356 (3rd Cir. 2012) (citing *Jamieson v. Gonzales*, 424 F.3d 765, 768 (8th Cir. 2005)). It is also noted that the U.S. Department of State, in its Foreign Affairs Manual, considered persuasive though not dispositive, states that a false claim to U.S. citizenship after September 30, 1996, in order to obtain a U.S. passport, entry into the United States, or any other benefit under U.S. state of federal law is an inadmissibility ground with a permanent bar. *DOS Foreign Affairs Manual*, § 40.63 N11(a).

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.

In a sworn statement, the applicant stated that she entered the United States without admission or parole and had been residing in the United States for 18 months when she returned to Mexico on June 22, 2007. On June 25, 2007, the applicant utilized the birth certificate of a U.S. citizen in order to gain entry to the United States. The applicant was ordered removed to Mexico in expedited removal proceedings, based upon a false claim to U.S. citizenship, and removed on the same date. Subsequent to the applicant's removal from the United States, she entered the United States without admission or parole. In an asylum interview, the applicant stated that she remained

in Mexico for one day before returning to the United States. The applicant's Form I-212 application dated May 22, 2009 and Form I-212 application dated October 18, 2011 both list a current residence in the United States. Accordingly, 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 her removal.

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 last departed the United States on June 25, 2007 and entered the United States a day later. As such, the applicant has remained outside the United States for less than ten years since her last departure. Based upon this ground of inadmissibility, the applicant is currently statutorily ineligible to apply for permission to reapply for admission. Further, the applicant is subject to a permanent bar to admission as a result of her false claim to U.S. citizenship pursuant to section 212(a)(6)(C)(ii) of the Act

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.