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

U.S. Citizenship and Immigration Services

DATE: JAN 2 4 2014 Office: LOS ANGELES, CA FILE:

IN RE:

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

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,

Michael Shumway

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, Los Angeles, California and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed.

The applicant is a native and citizen of Mexico who after a period of unlawful residence in the United States, departed and attempted to reenter the United States on May 15, 1999 by claiming to be a U.S. citizen. The applicant was removed and on May 16, 1999 again attempted to enter the United States by claiming to be a U.S. citizen. The applicant was then removed from the United States a second time. On some date after May 17, 1999, the applicant reentered the United States and is currently residing in California. The applicant was found to be inadmissible under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii) for falsely claiming to be a U.S. citizen for any purpose or benefit under the Act. The applicant is also inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). She 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 her U.S. citizen spouse and children.

In a decision dated June 8, 2009, the field office director found that the applicant was not eligible to apply for permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act because she had not departed the United States and ten years had not elapsed from the date of departure. The application was denied accordingly.

On appeal, counsel stated that the field office director erred in finding that the applicant was not eligible to apply for permission to reapply for admission.

In our decision, dated September 4, 2013, we found that the applicant was inadmissible under section 212(a)(6)(C)(ii) for falsely claiming to be a U.S. citizen for any purpose or benefit under the Act and as a result was ineligible for a waiver of inadmissibility. We then found, in accordance with *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964), that as the applicant was found inadmissible under section 212(a)(6)(C)(ii) of the Act, with no eligibility for a waiver, no purpose would be served in granting her Form I-212. The applicant's appeal was dismissed.

On motion, counsel asserts that the applicant is not inadmissible under 212(a)(6)(C)(ii) of the Act because the Act requires an affirmative statement of U.S. citizenship as opposed to the presentation of documents. Counsel also asserts that the applicant is eligible to apply for permission to reapply for admission and that the applicant's U.S. citizen spouse and four U.S. citizen children will suffer exceptional and extremely unusual hardship as a result of her inadmissibility. He requests that discretion be exercised in the applicant's favor.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. A

motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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 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.
>
> . . . .
>
> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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 before 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.

Counsel has cited no authority for the proposition that the Act requires an affirmative statement, as opposed to the submission of documentation, and we do not find any support in the language of the Act or from any other legal authority. Even were we to accept counsel's interpretation, it would avail the applicant nothing, as the applicant's inadmissibility under section 212(a)(6)(C)(ii) of the Act is based on her statements, not on documentation.

In the applicant's case, she presented no documentation, but asserted herself to be a U.S. citizen born in California. The record establishes that on May 15, 1999 the applicant attempted to enter the United States at the Port of Entry on foot. She had no documents for entry in her possession at the time of this attempt. She stated to the inspecting officer that she was a U.S. citizen by birth and was born in , California. This information is included on a Record of Deportable/Inadmissible Alien (Form I-213), dated May 15, 1999, and in a sworn statement taken from the applicant on May 16, 1999. The record establishes that shortly after being removed on May 16, 1999, the applicant made her second attempt at admission, again at the Port of Entry and again on foot. She had no documents for entry in her possession at the time of this second attempt. She again stated to the inspecting officer that she was a U.S. citizen. This information is included on a Record of Deportable/Inadmissible Alien (Form I-213), dated May 16, 1999, and in a sworn statement taken from the applicant on May 17, 1999. Thus, as stated above, the applicant is inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act and is not eligible for a waiver of inadmissibility.

We also do not find counsel's assertions regarding the applicant's eligibility to apply for a Form I-212 to be persuasive. In his brief, he cites to sections of the Act that are not relevant to the applicant's situation. As we stated in our prior decision and above, 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. *Matter of Martinez-Torres, supra.* The applicant cannot be admitted due to her inadmissibility under section 212(a)(6)(C)(ii) of the Act. An approved Form I-212 would serve no purpose for the applicant.

Finally, we make note of counsel's statements regarding hardship to the applicant's U.S. citizen spouse and four U.S. citizen children and acknowledge the hardship that will be caused as a result of the applicant's inadmissibility. However, the Act does not allow for discretion to be exercised favorably in cases involving inadmissibility under section 212(a)(6)(C)(ii) 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 that she is eligible for the benefit sought. Here the applicant has not met her burden. As the applicant has failed to demonstrate that the prior AAO decision was based on an incorrect application of law or policy, the motion is dismissed.

ORDER: The motion is dismissed.