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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
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Services

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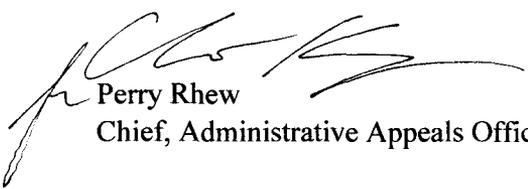
PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Washington Field Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bolivia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii)(I), for falsely representing herself to be a citizen of the United States in attempt to establish eligibility for in-state tuition at a Community College. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

The field office director concluded that the applicant is not eligible for a waiver as a matter of law, as there is no provision under the Act that provides for a waiver of section 212(a)(6)(C)(ii)(I) of the Act where an applicant made a false claim to U.S. citizenship on or after September 30, 1996. *Decision of the Field Office Director*, dated June 15, 2007.

On appeal, counsel for the applicant asserts that the field office director misapplied section 212(a)(6)(C)(ii)(I) of the Act. *Statement from Counsel in Form I-290B*, dated July 2, 2007. Counsel contends that the applicant is not permanently inadmissible and she is eligible to apply for a waiver. *Id.* at 2.

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 (including section 274A) or any other Federal or State law 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.

In the present matter, the applicant filed a Form I-485 application to adjust her status to lawful permanent resident on August 24, 2006. In connection with the application she was interviewed at the United States Citizenship and Immigration Services (USCIS) Washington District Office on March 27, 2007. During the interview, the applicant testified under oath that she made a false claim to U.S. citizenship in an application for admission to Northern Virginia Community College. A Record of Sworn Statement, bearing the applicant's original signature and that of the USCIS officer who took the statement, reports that the applicant was asked "Have you ever claimed to be a United States Citizen? If yes[,] for what purpose[?]" *Record of Sworn Statement*, dated March 27, 2007. The applicant answered "Yes, for school (college) for in[-]state tuition, so I could study." *Id.* at 2.

Based on the applicant's false claim to U.S. citizenship, she was found inadmissible under section 212(a)(6)(C)(ii)(I) of the Act, and the district director determined that the applicant is not eligible for a waiver pursuant to section 212(i) of the Act.

On appeal, counsel for the applicant asserts that the field office director misapplied section 212(a)(6)(C)(ii)(I) of the Act. *Statement from Counsel in Form I-290B* at 2.

Counsel asserts that the applicant was not informed of the consequences of stating whether she had previously made a false claim to U.S. citizenship. *Brief from Counsel*, at 2-3, dated August 1, 2007. Accordingly, counsel claims that the applicant was deprived of her due process rights. *Id.* at 3.

Counsel asserts that "[the applicant's] error may more appropriately be characterized, if at all, as an 'inadvertent' misrepresentation." *Id.* Counsel states that the applicant did not directly make the misrepresentation, as it was made on her behalf, and she has attempted to "purge the misrepresentation after finding out that it was made." *Id.* Counsel contends that "upon hearing of the error, [the applicant] has gone to Northern Virginia Community College to have them correct their database" *Id.* at 3-4.

Counsel states that the applicant's misrepresentation was not material to her application to adjust her status to lawful permanent resident. *Id.* at 4. Counsel asserts that the applicant did not "practice fraud on a U.S. government official," but that any fraud was committed against Northern Virginia Community College. *Id.* (citing *Matter of Y-G*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L & A-M*,

20 I&N Dec. 409 (BIA 1991); *Matter of L-L*, 9 I&N Dec. 324 (BIA 1961); *Matter of Areguilen*, 17 I&N Dec. 308 (BIA 1980)).

Counsel asserts that the applicant “had no right to counsel” in her interview. *Id.* at 5. Counsel contends that the applicant was not “advised of her rights to self-incrimination, [and] not advised of the implications of her responses.” *Id.* Counsel asserts that the applicant “was not asked if she completed the application [to Northern Virginia Community College] herself or [if] someone completed it for her . . .” *Id.* Counsel contends that the applicant has not asked whether she made a false claim to U.S. citizenship in her native language. *Id.*

Counsel discusses the due process requirements that apply to removal hearings before an Immigration Judge. *Id.* at 5-6.

Counsel contends that the applicant was never shown, and she did not sign, the sworn statement regarding her false claim to U.S. citizenship. *Id.* at 7.

Counsel asserts that the applicant did not gain a benefit by claiming to be a U.S. citizen, as she could have gained in-state tuition merely by showing that she was domiciled in Virginia, was taking more than six credit hours, and was enrolled in a degree program. *Id.* Counsel states that the applicant did not procure any state or federal benefit by making a false claim to U.S. citizenship. *Id.*

Counsel contends that the false claim to U.S. citizenship should not be attributed to the applicant, as her friend helped her complete the application online and the citizenship claim was “inadvertent and/or accidental.” *Id.*

On appeal, the applicant states that she had a friend complete her application to Northern Virginia Community College, and she did not get a copy of it or sign it. *Statement from the Applicant*, dated August 6, 2007. She indicates that her friend did not know she was not a U.S. citizen and “accidentally ticked the box that ‘native’ [sic].” *Id.* at 1. The applicant claims that she was “unaware of this mistake until later on.” *Id.* The applicant explains that the USCIS officer who interviewed her “did not explain anything to [her] before he asked [her] questions about the application,” and “[h]e did not tell [her] or [her] husband that [she] could speak with an attorney.” *Id.* She states that she was unaware of the difference in making a false claim to U.S. citizenship and making an error on a college application. *Id.* She provides that she “[has] since been to the University so that they can correct the error.” *Id.* She reports that she did not derive any benefit, “as [she has] been advised that [she] could have received in state tuition because [she] paid taxes and resided in Virginia.” *Id.*

The applicant claims that the USCIS officer who conducted her interview “did not show [her] or [her] husband any ‘sworn statement,’” and that she “did not sign any statement.” *Id.*

Upon review, the applicant has not shown that she was erroneously deemed inadmissible under section 212(a)(6)(C)(ii)(I) of the Act. It is first noted that whether the applicant made a false claim of U.S. citizenship is a factual matter that must be determined from the evidence of record. As noted

above, on March 27, 2007 the applicant reported to a USCIS officer that she made a false claim of U.S. citizenship in an application for admission to Northern Virginia Community College in order to obtain in-state tuition. The applicant now claims that she was not shown the sworn statement and she did not sign it. However, the statement contains the applicant's original signature, the signature of the USCIS officer who took the statement, as well as the signature of a witness. *Record of Sworn Statement* at 2. It is observed that the applicant's signature on the sworn statement matches her original signature on her Form I-485 application to adjust her status to lawful permanent resident. The applicant's signature is directly below the handwritten statement regarding her false claim to U.S. citizenship, with a certification that she read the statement or had it read to her, and that the answers she provided were true and correct to the best of her knowledge. *Id.* Accordingly, the record establishes by a preponderance of the evidence that the applicant was shown the sworn statement and informed of its contents, and that she certified her answers by signing the document. The applicant's claims on appeal that she was not shown the sworn statement and she did not sign it are not supported by the record.

In the sworn statement, the applicant clearly stated that she claimed to be a U.S. citizen to obtain in-state tuition at Northern Virginia Community College. On appeal, the applicant claims that her citizenship was erroneously stated in an application to Northern Virginia Community College by a friend who was assisting her. She asserts that her friend did not know she was not a U.S. citizen and accidentally represented that she was a U.S. citizen in the application. However, this assertion on appeal is inconsistent with the applicant's prior sworn statement. The applicant specifically indicated in the sworn statement that she made a false claim to U.S. citizenship for the particular purpose of paying tuition at a lower in-state rate. Thus, the sworn statement clearly shows that the applicant intentionally claimed to be a U.S. citizen to obtain a benefit. The applicant's claim on appeal that her false claim to U.S. citizenship was an inadvertent error attributable to a third party is not persuasive.

The applicant claims that she "[has] since been to the University so that they can correct the error." *Statement from the Applicant* at 1. However, as the record supports that the applicant falsely claimed U.S. citizenship for the purpose of obtaining in-state tuition, the fact that she later attempted to retract her claim has no bearing on whether she is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act.

Counsel asserts that there were irregularities in obtaining the applicant's sworn statement. Counsel asserts that the applicant was not informed of the consequences of stating whether she had previously made a false claim to U.S. citizenship, thus she was deprived of her due process rights. In support of this assertion counsel cites section 238(b)(4) of the Act, yet this provision addresses procedural safeguards available in removal proceedings in Immigration Court, thus it is not relevant in the present matter. In support of his position, counsel cites cases decided by the Ninth Circuit Court of Appeals which are neither binding nor persuasive authority over the applicant's case.

Counsel first cites the decision of the Ninth Circuit in *Pichardo v. I.N.S.*, 216 F.3d 1198 (9th Cir. 2000) yet declines to acknowledge its inapplicability to the applicant's situation. In *Pichardo v. I.N.S.*, a respondent in removal proceedings had been found inadmissible under section 212(a)(6)(C)

of the Act for making a false claim to U.S. citizenship, yet he was not informed whether he had been found inadmissible under section 212(a)(6)(C)(i) of the Act, which is waivable, or section 212(a)(6)(C)(ii) of the Act, for which there is no waiver. The Ninth Circuit found that the failure to inform the respondent of which section of law under which he was found inadmissible was a violation of his due process rights, as he was not afforded notice and opportunity to submit a waiver application if he was eligible under section 212(i) of the Act. However, in the present matter, the applicant was clearly informed that she was found inadmissible under section 212(a)(6)(C)(ii)(I) of the Act, and she was afforded the opportunity to submit an application for a waiver.

Counsel cites the decision of the Ninth Circuit in *Campos-Sanchez v. I.N.S.*, 164 F.3d 448, 450 (9th Cir. 1999). Again, counsel does not discuss the referenced matter or establish that it supports his assertions. In *Campos-Sanchez v. I.N.S.*, the Ninth Circuit addressed due process requirements in the context of adverse credibility findings in removal proceedings. As the present matter is not a removal hearing in Immigration Court, and the field office director did not question the applicant's credibility, counsel has not shown that the decision in *Campos-Sanchez v. I.N.S.* is relevant in the present proceeding. Nor has counsel sufficiently related his discussion of the due process requirements that apply to removal hearings before an Immigration Judge to the requirements of an interview before a USCIS officer in the course of adjudicating a Form I-485 application to adjust one's status to lawful permanent resident.

Counsel asserts that the applicant "had no right to counsel" in her interview, and the applicant asserts that she was not told that she could speak to an attorney. However, the record does not support that the applicant was deprived of the right to consult counsel, or that she was discouraged from doing so. Further, on February 27, 2007, the applicant was issued a Request for Applicant to Appear for Initial Interview notifying her of her interview on March 27, 2007 in connection with her Form I-485 application. *Request for Applicant to Appear for Initial Interview*, dated February 27, 2007. The request states that "Your attorney or authorized representative may come with you to the interview." *Id.* at 1. Thus, counsel's and the applicant's assertion that the applicant was not afforded an opportunity to obtain representation by an attorney is not persuasive.

Counsel contends that the applicant was not "advised of her rights to self-incrimination, [and] not advised of the implications of her responses." *Brief from Counsel* at 5. However, the applicant has not been charged with a crime, thus she has not been incriminated. It is noted that Form I-485 requires an applicant to answer numerous questions that relate to inadmissibility without an explanation of the consequences of the answers given, and counsel has not cited any authority to show that a USCIS interviewing officer has a duty to inform an applicant of all possible consequences of information provided.

Counsel contends that the applicant has not asked whether she made a false claim to U.S. citizenship in her native language. However, if the applicant was unable to converse fluently in English, she was advised to bring an interpreter. Specifically, the Request for Applicant to Appear for Initial Interview instructed the applicant as follows: "If you do not speak English fluently, you should bring an interpreter." *Request for Applicant to Appear for Initial Interview* at 1. The record does not

reflect that the applicant was unable to clearly understand the questions that were asked of her, or that she was unaware that she was reporting that she made a false claim to U.S. citizenship.

Counsel states that the applicant's misrepresentation was not material to her application to adjust her status to lawful permanent resident. However, the applicant must show that she is admissible to the United States, or that she has obtained a required waiver of inadmissibility, in order to establish eligibility to adjust her status to lawful permanent resident. Section 245(a) of the Act, 8 U.S.C. § 1255(a). Thus, whether or not she made a false claim to U.S. citizenship was a material concern in her interview.

Counsel asserts that the applicant did not "practice fraud on a U.S. government official," but that any fraud was committed against Northern Virginia Community College. *Brief from Counsel* at 4. In support of his claims, counsel cites *Matter of Y-G*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L & A-M*, 20 I&N Dec. 409 (BIA 1991); *Matter of L-L*, 9 I&N Dec. 324 (BIA 1961), and; *Matter of Areguilen*, 17 I&N Dec. 308 (BIA 1980). *Id.* Counsel's reliance on these decisions is misguided.

In *Matter of Y-G*, 20 I&N Dec. 794 (BIA 1994), the BIA found that an applicant did not commit fraud or misrepresentation to gain admission to the United States because he revealed his true identity and fraudulent documents to U.S. officials upon entry. Thus, the applicant was not inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation based on any representations he made to obtain his fraudulent travel documents. Essentially, the applicant was truthful at the moment that he actually applied for a benefit addressed in section 212(a)(6)(C)(i) of the Act (admission into the United States) and he did not commit fraud or misrepresentation before the individuals who were charged with administering the benefit.

However, it is first noted that the applicant in the present matter is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act. Section 212(a)(6)(C)(i) of the Act address inadmissibility due to fraud or misrepresentation to procure a benefit under the Act, which is a federal law. Yet, section 212(a)(6)(C)(ii)(I) of the Act renders an individual inadmissible for making a false claim to U.S. citizenship "for any purpose or benefit under this Act . . . or any other Federal or State law." Thus, as section 212(a)(6)(C)(ii)(I) of the Act addresses false claims relating to State law, it is evident that it anticipates misrepresentations to individuals who administer State programs. In the instant matter, the applicant was not truthful at the time she applied for a benefit that was governed by Virginia State law, as she misrepresented her citizenship to school officials who were tasked with determining whether she met State requirements for reduced tuition. A misrepresentation to a school official who administers a State-subsidized program governed by State law is a basis for inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act.

It is noted that the decisions in *Matter of D-L & A-M*, 20 I&N Dec. 409 (BIA 1991), and *Matter of L-L*, 9 I&N Dec. 324 (BIA 1961), address misrepresentations made in the course of procuring documentation or entry to the United States, and they do not support that a false claim to U.S. citizenship must be made to a U.S. official in order for an individual to be inadmissible under section 212(a)(6)(C)(ii)(I) of the Act. Counsel does not discuss the facts under review in *Matter of Areguilen*, 17 I&N Dec. 308 (BIA 1980), and the case is not relevant to the present matter.

Counsel asserts that the applicant did not gain a benefit by claiming to be a U.S. citizen, as she could have gained in-state tuition merely by showing that she was domiciled in Virginia, was taking more than six credit hours, and was enrolled in a degree program. The applicant further reports that she did not derive any benefit by claiming to be a U.S. citizen, "as [she has] been advised that [she] could have received in state tuition because [she] paid taxes and resided in Virginia." *Statement from the Applicant* at 1.

However, we take administrative notice of information from the Northern Virginia Community College admissions and financial aid department, which states, in pertinent part:

In-State Tuition Eligibility

To be eligible for in-state tuition rates, you must be domiciled in Virginia for a minimum of one year before the first official day of classes. When you apply for in-state tuition, you should be prepared to present documentation to support your claim. See the following "Domicile Requirements" section for details.

...

Domicile Requirements

All applicants for admission to Northern Virginia Community College claiming entitlement to in-state tuition privileges are required by the *Code of Virginia*, 23-7.4, to complete an Application for Virginia In-State Tuition Rates form.

To be eligible for in-state tuition, you must be domiciled in Virginia for a minimum of one year before the first official day of classes. Domicile is defined as your "present, fixed home where you return following temporary absences and where you intend to stay indefinitely." In essence, domicile has two parts, and you must meet both to qualify for in-state tuition. You must reside in Virginia, and you must intend to keep this as your home indefinitely.

Non-U.S. citizens on temporary visas, in restricted classifications, or undocumented are not eligible to establish Virginia domicile and eligibility for in-state tuition.

Northern Virginia Community College Admissions / Financial Aid, Fees
<<http://www.nvcc.edu/admissions/fees.htm>>, accessed on February 25, 2010 (emphasis added).

Code of Virginia section 23-7.4(C) states, in pertinent part:

Any alien holding an immigration visa or classified as a political refugee shall also establish eligibility for in-state tuition in the same manner as any other student.

However, absent congressional intent to the contrary, any person holding a student or other temporary visa shall not have the capacity to intend to remain in Virginia indefinitely and, therefore, shall be ineligible for Virginia domicile and for in-state tuition charges.

Based on the foregoing, Virginia State law dictates whether a student at the Northern Virginia Community College may qualify for State-subsidized in-state tuition rates. Under section 23-7.4(C) of the Code of Virginia, an individual present in the United States in a temporary nonimmigrant status may not satisfy the Virginia domicile requirements, and is therefore not eligible for in-state tuition.

The record shows that the applicant was admitted into the United States as a B-2 visitor for pleasure, a temporary nonimmigrant status. She has not shown that she has held any other lawful status in the United States. Thus, she was not eligible to establish domicile in Virginia, and she was not eligible for in-state tuition at the Northern Virginia Community College. Accordingly, the applicant's false claim to U.S. citizenship to officials of the Northern Virginia Community College was an attempt to circumvent section 23-7.4(C) of the Code of Virginia for the purpose of obtaining a benefit under Virginia State law.

Counsel's and the applicant's assertion that the applicant could have obtained in-state tuition rates based on the true facts is not supported by Virginia State law. The applicant has not presented any authority to show that she was eligible for in-state tuition as a B-2 nonimmigrant visitor for pleasure. It is noted that it is irrelevant whether the applicant in fact received a benefit due to her false claim to U.S. citizenship, as section 212(a)(6)(C)(ii)(I) of the Act addresses the purpose for which an applicant made such false claim, not merely the consequence.

Accordingly, the applicant falsely represented herself to be a citizen of the United States for the purpose of obtaining a benefit under State law, and she is consequently inadmissible under section 212(a)(6)(C)(ii)(I) of the Act.

The record shows that on June 23, 2004, on her application for admission to a State college, the applicant falsely represented herself as a U.S. citizen for the purpose of obtaining in-state tuition pursuant to State law. As the applicant made a false claim to U.S. citizenship after September 30, 1996, she is not eligible for a waiver of the ground of her inadmissibility. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.