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



U.S. Citizenship
and Immigration
Services



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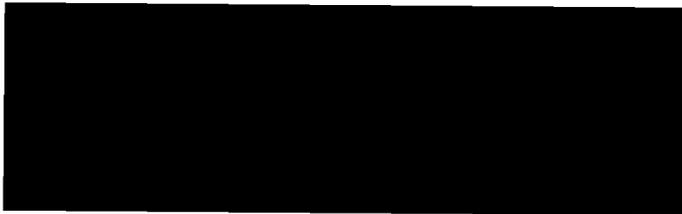
Date: **AUG 15 2011** Office: MIAMI, FLORIDA

FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i), 212(a)(6)(C)(ii) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), § 1182(a)(6)(C)(ii) and § 1182(h)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Cuba who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for attempting to procure an immigration benefit by falsely claiming United States citizenship. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his spouse and family.¹

In a decision dated November 4, 2008, the District Director found that the applicant was ineligible for a waiver of inadmissibility under 212(a)(6)(C)(ii) of the Act for falsely representing himself as a United States citizen and under 212(a)(2)(C) for his involvement in the illegal trafficking of drugs. The application was denied accordingly. *See Decision of the District Director* dated November 4, 2008.

On appeal, the applicant's attorney provided a brief in which she asserts that the applicant should not be found inadmissible for his involvement in illegal trafficking of drugs because the applicant was never in possession of drugs, the charges against him were dismissed and sufficient evidence does not exist tying him to the marijuana that was seized.² However, the applicant's attorney did not contest the applicant's inadmissibility under 212(a)(6)(C)(ii) of the Act for falsely representing himself as a United States citizen.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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

¹ The record shows that the applicant has been arrested and convicted for several crimes. The District Director did not directly address whether or not these convictions were crimes involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act and also did not directly address which crimes committed by the applicant constituted fraud or misrepresentation requiring a waiver under 212(i). Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act and no waiver exists for this ground of inadmissibility, the AAO will not determine whether the applicant is inadmissible under 212(a)(2)(A)(i)(I) or 212(i).

² The AAO will also not address whether the applicant is inadmissible pursuant to 212(a)(2)(C) for his alleged involvement in drug trafficking as he is already inadmissible under section 212(a)(6)(C)(ii), which renders him inadmissible and ineligible to apply for a waiver.

benefit under this Act (including section 274A) or any other Federal or State law is inadmissible

Section 212(i) of the Act provides that:

- (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 plain language of the statute clearly reflects that there is no waiver available to an alien who falsely represents himself or herself to be a citizen of the United States.

USCIS records reflect that the applicant executed a United States Application for Passport on June 28, 1999. In support of his application, he presented a State of Florida driver's license and a Commonwealth of Puerto Rico birth certificate. *See Affidavit of [REDACTED] Special Agent, U.S. Department of State*, dated September 9, 1999. Further, in an interview with Special Agent Brian [REDACTED] the applicant admitted to executing a passport application using these documents to represent himself as a United States citizen. *Id. Affidavit of [REDACTED]* Further, the applicant signed a Plea Agreement in which he pled guilty to making false statements in an Application for a United States Passport, based upon his submission of documents indicating that he was a United States citizen. *See Plea Agreement*, dated November 24, 1999. As a result of his false claim to United States citizenship, the applicant is inadmissible to the United States pursuant to sections 212(a)(6)(C)(ii) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See Section 291 of the Act, 8 U.S.C. § 1361*. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.