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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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HLS

FILE:

Office: NEW YORK, NY

Date: **JAN 10 2011**

IN RE:

Applicant: [REDACTED]

APPLICATION:

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 APPLICANT:

[REDACTED]

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 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*

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of China who was found to be inadmissible to the United States pursuant to 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. The applicant's spouse and child are U.S. citizens. The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The director concluded that there is no waiver available for inadmissibility under section 212(a)(6)(C)(ii) of the Act and no purpose would be served in granting the applicant a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act. *Decision of the Director*, at 4, dated October 18, 2010. The Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Id.*

On appeal, counsel asserts that the applicant timely retracted his misrepresentation and his spouse will suffer extreme hardship if he is prohibited from residing in the United States. *Brief in Support of Appeal*, at 5, 11, dated December 14, 2010.

The record includes, but is not limited to, counsel's brief, a psychological evaluation of the applicant's spouse, the applicant's sworn statement, and a United States Citizenship and Immigration Services (USCIS) interoffice memorandum, photographs of the applicant's family, statements from the applicant and his spouse, and financial documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

The AAO finds that the record reflects that the applicant attempted to procure admission to the United States by presenting a U.S. passport on December 27, 2000. Counsel asserts that the applicant had the said questionable document (U.S. passport) in his carry-on luggage while walking through the terminal after landing, he had not reached the immigration inspection booth when two "officials" stopped him and expressed some words that the applicant did not understand, he opened up his bag and the officials found the document and took him to a room. *Brief in Support of Appeal*, at 2. Counsel states the applicant almost instantaneously had the benefit of expressing himself and providing a sworn statement to an immigration inspector at the same location through an interpreter and he immediately expressed that the purported document was not his passport. *Id.* at 2-3. The AAO notes that there is no statement from the applicant regarding the details of his inspection, other than his sworn statement to an immigration officer in secondary inspection. In addition, counsel's description does not appear to be based on first-hand knowledge and counsel's assertions do not constitute evidence.

Counsel cites to an unpublished decision, *Nguyen v. Mukasey*, 2008 U.S. App. LEXIS (9<sup>th</sup>. Cir. 2008), in support of the applicant's claim of timely retraction. The AAO notes that unpublished decisions are not binding on any proceedings, including this case, and the applicant's case derives from New York, which is not in the Ninth Circuit. Counsel also cites to a March 3, 2009 USCIS interoffice memorandum in asserting that a timely retraction is a defense to section 212(a)(6)(C)(ii)(II) of the Act and it eliminates the misrepresentation. *Id.* at 3. Counsel raises the

Adjudicator's Field Manual (AFM) which has a section on timely retraction. *Id.* Counsel asserts that the December 27, 2000 sworn statement clearly establishes that the applicant had voluntarily and without delay (at the first opportunity-during the first interview) and as soon as he was able to speak Chinese testified that the document was not his own. *Id.* at 4-5.

However, the AAO notes that the applicant was specifically asked what documents he presented to the "primary inspector" and he answered "The U.S. Passport." *Record of Sworn Statement in Proceedings under section 235(b)(1) of the Act*, at 3, dated December 27, 2000. The AAO also notes the Form I-275, Withdrawal of Application for Admission/Consular Notification, which reflects that the applicant presented himself for inspection as a U.S. citizen with a photo-substituted U.S. passport in another name. *Form I-275, Withdrawal of Application for Admission/Consular Notification*, dated December 27, 2000. Counsel's describes an inspection process that is irregular (bypassing initial inspection and proceeding straight to secondary inspection). The applicant hasn't shown by a preponderance of the evidence that his first representation regarding citizenship was in the interview in secondary. The interview itself indicates that he presented a U.S. passport to an inspector prior to the interview (the initial inspection that triggered secondary). The applicant did not retract his statement before the primary inspector (his first opportunity), rather he retracted it upon being placed in secondary inspection. The retraction must be voluntary, prior to being exposed by an officer. *AFM*, at 29. In this case, the applicant was exposed and sent to secondary inspection. The record reflects that his subsequent honest answer when questioned was voluntary, however it was not timely as it was not made at the first opportunity. "Admitting to the false claim of U.S. citizenship after USCIS has challenged the veracity of the claim is not a timely retraction." *Id.* at 29. Thus, the applicant has not overcome the clear indication in the record that he made a false claim to U.S. citizenship and the AAO does not find the applicant's retraction to have been timely. As a result of his misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act.

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

- (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.
- (II) EXCEPTION- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

There is no waiver for this ground of inadmissibility and the exception in section 212(a)(6)(C)(ii)(II) of the Act does not apply to the applicant. As the applicant is statutorily inadmissible to the United States, no purpose would be served in adjudicating a waiver under section 212(i) of the Act for a section 212(a)(6)(C)(i) finding of inadmissibility.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.