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



U.S. Citizenship  
and Immigration  
Services

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DATE: **JUL 12 2011** Office: SAN BERNARDINO, CA FILE: 

IN RE: Applicant: 

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:



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 Field Office Director, San Bernardino, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 36-year-old native and citizen of Mexico 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 attempting to procure entry into the United States by falsely claiming to be a United States citizen. The applicant is the child of a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, in order to reside in the United States with her United States citizen parents and children.

The Field Office Director found that the applicant was removed from the United States after attempting to enter the United States by claiming to be a United States citizen in violation of section 212(a)(6)(C)(ii) of the Act. The Field Office Director determined that the applicant is permanently barred from the United States and dismissed the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, dated March 25, 2009.

On appeal, counsel asserts that the director erred in denying the applicant's waiver request because the applicant did not claim to be a United States citizen and the director has not presented any evidence in support of her conclusion that the applicant falsely claimed to be a United States citizen. *See Form I-290B*, dated April 20, 2009, and the accompanying brief in support of the appeal.

The record includes, but is not limited to, counsel's brief in support of the appeal, a statement from the applicant, copies of wage and income tax documents, a letter from [REDACTED] and copies of medical records for the applicant's mother, copies of school records from Ontario-Montclair School District, Ontario, California, relating to the applicant's children and supportive statements from family and friends. The record also includes documentation related to the applicant's apprehension and removal. The entire record was reviewed and considered in rendering this decision on the appeal.

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 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.

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

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 [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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 case, the record reflects that on June 15, 1997, the applicant attempted to procure entry into the United States by presenting a valid United States birth certificate belonging to another person. The applicant was denied entry. She was detained and placed in Expedited Removal proceedings under section 235(b)(1) of the Act. On June 19, 1997, the applicant was removed from the United States to Mexico. The record reflects that the applicant subsequently re-entered the United States without being inspected and admitted or paroled. The record does not contain the actual date of the applicant's reentry into the United States. On the Form I-601 application, the applicant indicated that she lived in Ontario, California, from 1989 to June 18, 1997, and from June 1997 until the present. Based on this information, it appears that the applicant re-entered the United States shortly after her removal to Mexico. The record also reflects that the applicant's father filed a Form I-130 on the applicant's behalf, which was approved on April 22, 1992. On March 19, 2008, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212). At her interview for adjustment of status, the applicant was found inadmissible under section 212(a)(6)(C)(ii) of the Act, and on May 25, 2008, the applicant filed a Form I-601 waiver application. On March 25, 2009, the Field Office Director denied the Form I-601, finding that the applicant is permanently barred from the United States under section 212(a)(6)(C)(ii) of the Act. The Field Office Director also denied the Form I-485 and Form I-212 applications on the same date for the same reason.

On appeal, counsel asserts that the director erred in her decision to deny the applicant's waiver request on the grounds that the applicant falsely claimed to be a United States citizen and is inadmissible under section 212(a)(6)(C)(ii) of the Act because the applicant denied having used anyone's birth certificate at the time of her application for admission into the United States and that the Field Office Director has not presented any evidence that the applicant falsely claimed to be a United States citizen.

The AAO finds that contrary to counsel's assertion, the record reflects that on June 17, 1997, the applicant completed a Sworn Statement under penalty of perjury in which she admitted that she presented a valid United States birth certificate belonging to another person to an immigration official in order to procure entry into the United States.<sup>1</sup> The applicant responded to the following questions:

- Q: How did you attempt to enter the United States?  
A: Walking through the "line" and by presenting a birth certificate from the United States.
- Q: How did you obtain the document presented?  
A: My uncle, [REDACTED] living in Ontario contacted his girl friend, [REDACTED] [REDACTED] for her to bring me into the United States. She came to Tijuana, handed me her daughter's birth certificate and we walked together to the "line". My uncle was to pay her \$500.00 dollars once I arrived to Ontario.
- Q: Do you have a legal entry document to enter or reside in the United States?  
A: No.

*See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867), dated June 17, 1997.*

Based on the applicant's admission, she is inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act. There is no provision for a waiver under section 212(i) of the Act for an alien who is inadmissible under section 212(a)(6)(C)(ii) of the Act for falsely representing himself or herself to be a U.S. citizen on or after September 30, 1996.

The record shows that the applicant was expeditiously removed from the United States to Mexico on June 19, 1997.<sup>2</sup> It further reflects that after the applicant's removal to Mexico, she reentered the United States without being inspected and admitted or paroled. Therefore, the applicant is also inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act for having re-entered the United States without being admitted after having been ordered removed under section 235(b)(1) of the Act.

Section 212(a)(9)(C)(i) of the Act states, in pertinent part:

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<sup>1</sup> See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867B) dated June 17, 1997.

<sup>2</sup> See Notice to Alien Ordered Removed/Departure Verification (Form I-296), dated June 17, 1997.

(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.

(i) 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 . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien’s reapplying for admission....

An alien who is inadmissible under section 212(a)(9)(C)(i)(II) of the Act may not apply for consent to reapply for admission unless the alien has been outside the United States for more than 10 years since the date of the alien’s last departure from the United States. *Matter of* [REDACTED] 24 I&N Dec. 355, 358-59 (BIA 2007). In this case, since the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act for which no waiver is available, no purpose will be served in determining whether the applicant meets the eligibility requirement under section 212(a)(9)(C).

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.