

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

HL5

FILE: [REDACTED] Office: MILWAUKEE, WI Date:

MAR 25 2011

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF PETITIONER:

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 \$585. 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, Milwaukee, Wisconsin. 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 Mexico 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 claiming U.S. citizenship. The applicant 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 his U.S. citizen spouse and children.

The field office director found that the applicant is not eligible for a waiver for his false claim to U.S. citizenship and denied the application accordingly. *Decision of the Field Office Director*, dated July 25, 2008.

On appeal, counsel asserts that the applicant did not affirmatively make any misrepresentation regarding U.S. citizenship. Specifically, counsel contends the applicant entered the United States from Mexico on or about January 15, 1997, as a passenger in his aunt's car. According to counsel, at the border, all passengers were asked to step out of the car. Counsel states that an agent called out names one by one and that the applicant raised his hand in response to the name '██████████' as he had been instructed to do by his aunt. Counsel states that the applicant did not possess or present any documents containing that name, did not speak at all, and was never questioned. Therefore, according to counsel, the applicant never directly stated to anyone that he was a U.S. citizen. Because the applicant purportedly did not make an affirmative representation about U.S. citizenship, counsel contends the applicant is not inadmissible, requires no waiver, and is eligible to adjust his status pursuant to section 245(i) of the Act. *Brief in Support of the Appeal*, dated August 21, 2008.

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).

The applicant states that on or about January 15, 1997, he arrived in the United States in his aunt's car from Mexico. According to the applicant, there were about five people in the car, including two uncles, a cousin, and another aunt. The applicant states that:

[A]t the border the Border Patrol Agents asked us to get out of the car. They checked the vehicle and the[n] called us by name, one by one. They called [REDACTED] and I came, even though[] that is not my name. My aunt told me to do this. . . . The Border Patrol simply called the name [REDACTED], and I raised my hand. [REDACTED] is my cousin, and he is a U.S. citizen. I did not see any document with his name on it, but I know he was born in the U.S., and that his father was born in Puerto Rico. . . . The Border Patrol did not ask m[e] any questions at all. They did not ask me to show them any document. I did not have any document, nor did I show them anything at all. All I did was raise my hand when they called [REDACTED] I did not see anyone show any documents to the agents except my uncle. I believe my uncle may have shown the[m] his green card. . . . The Border Patrol Agents then allowed us to reenter the car. We boarded the car, and my aunt drove all of us across the border into the United States.

Affidavit of [REDACTED] dated August 14, 2008.

The record shows that on April 20, 2001, the applicant filed an Application for Employment Authorization (Form I-765). On the Form I-765, the applicant stated he “used false papers” as his manner of last entry into the United States. In addition, the record shows that on April 30, 2001, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) and that in response to the question, “[i]n what status did you last enter [the United States]?” the applicant stated “used false papers.” Similarly, the record shows that on April 30, 2001, the applicant filed a Petition for Alien Relative (Form I-130). On the Form I-130, the applicant stated that he entered the United States because he “used false papers.” The record further shows that the applicant was interviewed for his adjustment application on June 21, 2006. Notes from the interviewing officer indicate that the applicant “used B/C from cousin born in U.S.” and that the applicant “[r]e-entered [the United States] using USC’s cousin’s B/C in 1997.”

After careful consideration of the evidence, the AAO finds that the applicant has not shown that he 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 in the record. In this case, according to the Form I-765, Form I-485, and Form I-130, applications the applicant affirmatively filed of his own accord, the applicant stated that he entered the United States “us[ing] false papers.” Notes from the applicant’s adjustment interview confirm this concession that the applicant used false papers to enter the United States,

specifying that the applicant used his U.S. citizen cousin's birth certificate to enter the country. In addition, the applicant's affidavit further shows that the applicant entered the United States by assuming his cousin's identity, a cousin the applicant knew was a U.S. citizen by birth.

Counsel's contention that the applicant made no affirmative representation that he was a U.S. citizen, and counsel's reliance on cases where the alien is either sleeping upon entry into the United States or merely a passenger in a car during entry into the country, are misplaced. In this case, the applicant was called out of the car and concedes he "raised [his] hand" when his cousin's name was called. Under these circumstances, the applicant did, indeed, make an affirmative representation regarding his identity to the border patrol agent. Whether or not the applicant himself handed his cousin's birth certificate to a border patrol agent is irrelevant in that the applicant knew his cousin was a U.S. citizen and represented himself as that cousin to the agent in his attempt to enter the United States.

The AAO notes that the applicant was nineteen years old at the time of this misrepresentation. Furthermore, the AAO notes that the applicant had previously applied for, and was granted, voluntary departure under the Family Unity Program in March 1992. The record further shows that the applicant was arrested on December 4, 1996, for immigration offenses and was again granted voluntary departure. The applicant conceded during his adjustment interview that he departed the United States, only to re-enter the United States claiming he was his U.S. citizen cousin. Under these circumstances and considering the applicant's immigration history, the evidence shows that the applicant was fully aware that his representation that he was his cousin, a U.S. citizen, would illegally gain him entry into the United States.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant's explanation that he was not asked any questions and did not show border patrol agents any document fails to meet this burden.

Accordingly, the record establishes by a preponderance of the evidence that the applicant made a false claim to U.S. citizenship. As the applicant made a false claim to U.S. citizenship after September 30, 1996, he is not eligible for a waiver of the ground of his inadmissibility. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.