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U.S. Department of Homeland Security
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

[REDACTED]

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DATE: NOV 30 2011 Office: TAMPA, FL

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(C)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

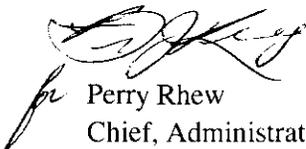
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INSTRUCTIONS:

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 application was denied by the District Director, Tampa, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guyana who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i), for having attempted to enter the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a U.S. citizen and the mother of two U.S. citizens. She seeks a waiver of inadmissibility in order to remain in the United States with her family.

The District Director found that, the applicant had failed to establish that a bar to her admission would result in hardship to a qualifying relative and denied the waiver application accordingly. *See District Director's Decision*, dated August 3, 2009.

On appeal, counsel for the applicant asserts that a denial of the applicant's waiver application would result in extreme hardship to her spouse, parents and children. *Form I-290B, Notice of Appeal or Motion*, dated August 18, 2009; *see also counsel's brief*, dated August 20, 2009.

The AAO notes that the Form I-290B and counsel's brief indicate that the denial of both the I-601 and I-485 are being appealed. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement.

The AAO cannot exercise appellate jurisdiction over additional matters on its own volition, or at the request of an applicant or petitioner. As a "statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy," the creation of appeal rights for adjustment application denials meets the definition of an agency "rule" under section 551 of the Administrative Procedure Act. The granting of appeal rights has a "substantive legal effect" because it is creating a new administrative "right," and it involves an economic interest (the fee). "If a rule creates rights, assigns duties, or imposes obligations, the basic tenor of which is not already outlined in the law itself, then it is substantive." *La Casa Del Convaleciente v. Sullivan*, 965 F.2d 1175, 1178 (1st Cir. 1992). All substantive or legislative rule making requires notice and comment in the Federal Register.

Accordingly, the AAO does not have jurisdiction over an appeal from the denial of a Form I-485 adjustment application filed under section 245 of the Immigration and Nationality Act, and will consider only the I-601 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.

The record reflects that the applicant unsuccessfully attempted to enter the United States on July 10, 1996, using a Trinidadian passport¹ and that on December 17, 1996, she gained admission to the United States based on her presentation of a U.S. passport at the port-of-entry. While the District Director found the applicant's use of a Trinidadian passport in her July 10, 1996, attempt to enter the United States and her presentation of a U.S. passport on December 17, 1996 to represent violations under section 212(a)(6)(C)(i) of the Act, the AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, are inadmissible under section 212(a)(6)(C)(ii)(I) of the Act. Therefore, while the AAO agrees that the applicant's July 10, 1996 attempt to enter the United States with a Trinidadian passport renders her inadmissible under section 212(a)(6)(C)(i) of the Act, we find that her use of a U.S. passport to enter the United States on December 17, 1996, permanently bars her admission under section 212(a)(6)(C)(ii)(I) of the Act, a ground of inadmissibility for which no waiver is available.

At her adjustment interview on January 21, 2009, the applicant gave a sworn statement in which she attested that she had entered the United States in December 1996, with another individual's U.S. passport, but that she was not aware that she was falsely claiming to be a U.S. citizen.

The AAO notes the applicant's claim that she was not aware at the time she presented the U.S. passport to an immigration official in New York, that she was falsely claiming to be a U.S. citizen. However, section 212(a)(6)(C)(ii) does not require that a claim to U.S. citizenship be willful or knowing, just that it be false. As a result, her testimony at the time of her 2009 adjustment interview that she submitted a U.S. passport to seek admission to the United States establishes the section 212(a)(6)(C)(ii) inadmissibility. Therefore, while the applicant's July 10, 1996 attempt to enter the United States using another individual's Trinidadian passport renders her inadmissible under section

¹ The record reflects that on June 13, 2007, the Interim District Director denied a previous section 212(i) filed by the applicant in connection with her June 10, 1996 attempt to enter the United States. The applicant timely filed an appeal with the AAO, which was dismissed on July 7, 2009. At the time of the AAO's decision, the record did not establish that the applicant had entered the United States in December 1996 using a U.S. passport.

212(6)(C)(i) of the Act, her use of a U.S. passport to enter the United States in December 1996 bars her admission under section 212(a)(6)(C)(ii)(I) of the Act, an ineligibility for which no waiver is available. In that the applicant obtained admission to the United States as a returning U.S. citizen on December 17, 1996, she is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act.

The record establishes that the applicant made a false claim to U.S. citizenship that bars her admission under section 212(a)(6)(C)(ii)(I) of the Act. No waiver is available for a violation of section 212(a)(6)(C)(ii)(I) and the record fails to demonstrate that the applicant qualifies for the exception described in section 212(a)(6)(C)(ii)(II). Accordingly, the AAO finds no purpose would be served in considering whether she may be eligible for a waiver under section 212(a)(6)(C)(i)(I) of the Act.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Immigration and Nationality 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.