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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**

415

Date: APR 25 2012 Office: LOS ANGELES, CALIFORNIA FILE: [REDACTED]

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:

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 E. New

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States by claiming U.S. citizenship. The record indicates that the applicant is married to a lawful permanent resident of the United States and the mother of three U.S. citizen children. She 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, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse and children.

The Field Office Director determined that since the applicant entered the United States without inspection 10 days after she was removed, she is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and he denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 17, 2009.

On appeal, the applicant, through counsel, contends that the "record is not clear as to whether in December of 1997 [the applicant] was in fact, expeditiously removed and thus barred from reentering the US or whether she withdrew her application after the officer became aware of her family connections to the US." *Form I-290B*, filed October 12, 2009. Additionally, counsel claims that the applicant filed her "waiver in reliance on the Ninth Circuit's decision in *Perez-Gonzalez v. Ashcroft*," and therefore, the decision of *Duran Gonzales* should not be applied retroactively, "it has been more than ten years since her 1997 removal[,] and she is now eligible for the *nunc pro tunc* adjudication of the form I-212." *Id.*

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and her husband, letters of support, school records for the applicant's children, financial documents, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

(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:

(1) The [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 indicates that on November 30, 1997, the applicant attempted to enter the United States by presenting an altered California birth certificate. On December 1, 1997, the applicant was ordered removed from the United States. *See Form I-860, Notice and Order of Expedited Removal*. She was removed the next day. On December 12, 1997, the applicant entered the United States without inspection. *See Form I-485, Application to Register for Permanent Residence or Adjust Status*, filed November 10, 2006.

Aliens making false claims to United States citizenship on or after September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), are ineligible for waiver consideration. *See* sections 212(a)(6)(C)(ii) and (iii) of the Act. As the applicant's false claim to United States citizenship occurred after September 30, 1996, the applicant is clearly inadmissible to the United States and is not eligible for a waiver under section 212(a)(6)(C)(iii) of the Act. The AAO also finds that the applicant is ineligible for the exception to the inadmissibility grounds under section 212(a)(6)(C)(ii)(II) of the Act. Further, the AAO finds the applicant inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been

removed from the United States on December 2, 1997, and subsequently entering the United States without inspection.

The AAO finds that because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his U.S. citizen spouse or whether he merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.