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



U.S. Citizenship
and Immigration
Services



H5

DATE: **AUG 06 2012**

OFFICE: LOS ANGELES, CA

FILE: 

IN RE: 

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Los Angeles, California, and 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 Act, 8 U.S.C. §1182(a)(6)(C)(ii)(I), for falsely representing herself to be a U.S. citizen for any purpose or benefit under the Act, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. 1182(a)(6)(C)(i), for attempting to procure admission or an immigration benefit through fraud or willful misrepresentation of a material fact. The applicant's father is a U.S. lawful permanent resident, and the applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative. She 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 family.

The applicant was also found to be inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for entering the United States without admission after removal. The Form I-601 waiver does not correspond to this ground of inadmissibility. Rather, the applicant must obtain permission from USCIS in order to apply for admission into the United States.¹

In a decision dated March 5, 2009, the director denied the Form I-601 application on the basis that no waiver was available for the applicant's inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act. The director indicated further that the applicant could not be granted permission to reapply for admission into the United States under section 212(a)(9)(C) of the Act, because she had reentered the United States without admission after removal, and she was subject to section 241(a)(5) of the Act, pertaining to reinstatement of removal orders.

Counsel contests that the applicant attempted to enter the United States by claiming she was a U.S. citizen and that she is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act. Counsel also contests the finding that the applicant entered the United States without admission subsequent to her removal, that she is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and that she is ineligible for any relief under the Act based on the director's reading of section 241(a)(5) of the Act.²

Counsel does not contest the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act, and asserts on appeal that the applicant's lawful permanent resident father would experience extreme hardship if the applicant's waiver application is denied. In support of these assertions, counsel submits copies of the applicant's removal, inadmissibility, and parole documents. She also submits letters from the applicant and her children, medical evidence, financial information, documents establishing identity and citizenship, and birth certificate and academic documentation for the applicant's children.

¹ The record contains a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, filed by the applicant on April 28, 2006. No decision has been issued on the Form I-212.

² The record does not reflect that the applicant's removal order has been reinstated under section 241(a)(5) of the Act.

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

(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.

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 and are ineligible for waiver consideration.

Counsel asserts on appeal that the applicant did not claim to be a U.S. citizen when she attempted to enter the United States on October 9, 2001, and that instead, a man with whom the applicant was traveling told the immigration officer that the applicant was a U.S. citizen. The applicant asserts further, in an affidavit submitted on appeal, that she traveled to the U.S. border in a man's car in October 2001, and that at the port of entry, she said nothing; the alien smuggler told the immigration officer that she was a U.S. citizen. She later told an immigration inspector she was not a U.S. citizen.

The AAO notes that an alien is responsible for misrepresentations made by his or her agent, if it is established that the alien was aware of the misrepresentation made by the agent on her behalf. This includes oral misrepresentations made at the border by an aider of the alien's illegal entry. See *Department of State Foreign Affairs Manual*, Vol. 9 § 40.63, Note 4.5. Furthermore, the AAO finds that the assertion that the applicant did not attempt to enter the United States by claiming to be a U.S. citizen on October 9, 2001, is uncorroborated and unconvincing.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien (Form I-213), dated October 9, 2001, reflecting that the applicant sought entry into the United States at the Calexico, California port of entry in a vehicle driven by another individual. The male driver and the applicant were the only people in the vehicle, and the Form I-213 clearly states that the female passenger "claimed to be a citizen of the United States born in Brawley, CA." The Form I-213 reflects further that it was only after she was placed into secondary inspection that the applicant recanted her claim to U.S. Citizenship and stated that she is a native and citizen of Mexico."

The record additionally contains a sworn affidavit signed by the applicant on October 9, 2001, reflecting, in pertinent part, the following exchange between the immigration officer and the applicant:

- Q. Did you make an attempt to enter the United States today?
A. Yes.
Q. Of what country did you declare to be a citizen?
A. United States.
Q. Are you a citizen of the United States?
A. No.

The applicant's sworn affidavit reflects further that the applicant stated she knew it was illegal to attempt to gain entry into the United States by falsely claiming to be a U.S. citizen, and that she declared herself to be a citizen because she "wanted to enter the United States."

The AAO finds that the evidence in the record clearly establishes the applicant attempted to enter the United States on October 9, 2001 by claiming to be a U.S. Citizen. The applicant is therefore inadmissible under section 212(a)(6)(C)(ii)(I) of the Act.

There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(6)(C)(ii)(I) of the Act, and the record fails to demonstrate that the applicant qualifies for the exception described in section 212(a)(6)(C)(ii)(II) of the Act. As the applicant's inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act statutorily bars her admission to the United States, the AAO finds no purpose would be served in considering whether she is able to establish eligibility for a waiver of her inadmissibility under sections 212(a)(6)(C)(i)(I) and 212(a)(9)(C)(i)(II) of the Act.³ The appeal shall therefore be dismissed.

ORDER: The appeal is dismissed.

³ *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.