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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

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Date: **MAY 24 2012** Office: GUATEMALA CITY FILE:

IN RE: Applicant:

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), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 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 with the field office or service center that originally decided your case by filing a 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 waiver application was denied by the Field Office Director, Guatemala City. 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 Guatemala who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, section 212(a)(9)(A) of the Act as an alien who has been removed and who again seeks admission within five years of the date of removal, section 212(a)(9)(C) of the Act for entering the United States without inspection after being removed, section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit, and section 212(a)(6)(C)(ii)(I) of the Act for falsely claiming U.S. citizenship. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act and section 212(a)(9)(B)(v) of the Act in order to reside in the United States with his U.S. citizen wife and children.

The field office director found that applicant is not eligible for a waiver under section 212(a)(6)(C)(ii)(I) of the Act for falsely claiming U.S. citizenship or section 212(a)(9)(C) of the Act for entering the United States without inspection after being removed. In addition, the field office director found that the applicant failed to establish extreme hardship to a qualifying relative. The field office director denied the application accordingly. *Decision of the Field Office Director*, dated April 16, 2010.

On appeal, the applicant states that he never claimed to be a U.S. citizen and never presented a U.S. birth certificate to immigration officials.

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 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 submits an affidavit claiming that he did not have any papers on him when he attempted to enter the United States, so it was impossible for him to present a United States birth certificate. According to the applicant, he paid a person to bring him to the United States and the only thing they told him to say was that he came from Mexico because if he said anything else, he would purportedly be arrested and put in jail. The applicant contends that when he was approached by border patrol officers, he did not claim U.S. citizenship and did not provide any documentation. He states he has no idea what the two ladies who brought him to the United States might have said to the officers.

After a careful review of the entire record, the AAO finds the applicant has not met his burden of proving he is admissible to the United States. The record contains ample documentation showing that the applicant made a false claim to U.S. citizenship. Specifically, the record contains a detailed sworn statement signed by the applicant that states:

Q. How did you apply for entry into the United States today?

A. I presented that birth certificate (pointing to Arizona birth certificate [REDACTED] in the name of [REDACTED] to the inspector.

Q. Is that your birth certificate?

A. No.

Q. Whose birth certificate is it?

A. I don't know.

Q. How did you obtain this birth certificate?

A. I found it in a bus. I'm a mechanic and found it when I was working on the bus.

Q. Do you know it is illegal to use a U.S. birth certificate or any other document not yours in order to gain entry into the United States?

A. Yes.

....

Q. Who is the woman driving the car in which you were a passenger?

A. I just met her I explained my situation to her. She agreed to help me by giving me a ride and teaching me how to say "U.S. citizen". . . .

Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act (Form I-867A), dated November 14, 2001. The AAO notes that the sworn statement was conducted in Spanish and signed and initialed by the applicant. The record shows that the applicant was placed in expedited removal proceedings, ordered removed, and removed from the United States the same day. *Notice and Order of Expedited Removal (Form I-860)*, dated November 14, 2001; *Verification of Removal (Form I-296)*, dated November 14, 2001. The record also contains a copy of a U.S. birth certificate in the name of [REDACTED]. To the extent the applicant contends that he is entitled to cross examine the officers and review the evidence used against him in order to determine its authenticity and accuracy, he provided no legal support for that assertion. The applicant's sworn statement and documents confirming his removal, as well as photographs of the applicant and fingerprint reports, are in the record before the AAO. The applicant may file a Freedom of Information Act (FOIA) request to obtain a copy of his file.

The applicant has not provided any competent, independent, objective evidence to meet his burden of proving he is admissible to the United States. Therefore, the record shows that the applicant is inadmissible to the United States for making a false claim to U.S. citizenship. There is no waiver of this permanent ground of inadmissibility. Accordingly, no purpose would be served in examining the applicant's eligibility for waivers of his other grounds of inadmissibility and the appeal will be dismissed.

ORDER: The appeal is dismissed.