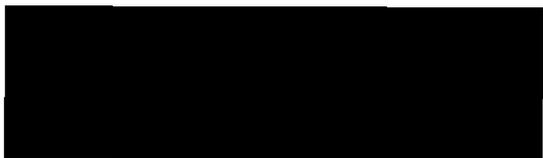


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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



H5

DATE: **SEP 28 2012**

OFFICE: MONTERREY, MEXICO

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:

SELF-REPRESENTED

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 waiver application was denied by the Field Office Director, Monterrey, Mexico and 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 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 sought to procure an immigration benefit by fraud or willful misrepresentation. The applicant is married to a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision, dated September 22, 2010, the field office director found that the applicant had attempted to enter the United States with a fraudulent document, that the applicant had not shown that her spouse would suffer extreme hardship as a result of her inadmissibility, and that she did not warrant the favorable exercise of discretion.

In a Notice of Appeal to the AAO (Form I-290B), dated October 11, 2010, the applicant's spouse states that the applicant was only 15 years old when she attempted to enter the United States with the fraudulent document and that she was just following the orders of her mother.

The record indicates that the fraudulent document the applicant used when she attempted to enter the United States was a fraudulent birth certificate from Texas. Thus, the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act for falsely claiming U.S. citizenship.

Section 212(a)(6)(C)(ii) of the Act states:

- (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 shows that on November 16, 2003, at the age of 15 years old, the applicant attempted to enter the United States by presenting a fraudulent Texas birth certificate and identification card at the O'Hare International Airport in Chicago, Illinois. During secondary inspection, the applicant states that she knew the documents were fraudulent, that she purchased them for \$5,000 pesos, that

her mother was an illegal immigrant living in Illinois, and that she had never been to the United States.

Based on the applicant's presentation of a fraudulent birth certificate from Texas to an immigration officer for admission to the United States, we find that the applicant made a false claim to U.S. citizenship and is inadmissible 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) 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). The AAO acknowledges that the applicant was a minor at the time she presented the fraudulent birth certificate, but section 212(a)(6)(C)(ii)(I) of the Act does not provide for an exception for minors, and the applicant reflects that the applicant was aware of the fraudulent nature of her actions. In *Malik v. Mukasey*, 546 F.3d 890-92 (7<sup>th</sup> Cir. 2008), the Seventh Circuit Court of Appeals found that two 17-year-old brothers were accountable for having misrepresented their nationality in asylum proceedings, noting the finding by the Board of Immigration Appeals that "the brothers were young when their fraud occurred but . . . that they were old enough to know better and to be held accountable for their actions." We believe the same rationale applies in this case. Accordingly, the applicant's admission to the United States is statutorily barred by section 212(a)(6)(C)(ii)(I) of the Act and no purpose would be served in considering whether she might be able to establish eligibility for a waiver under section 212(h) of the Act. Accordingly, the appeal will be dismissed.

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, places the burden of proof upon the applicant to establish that eligibility. Here, the applicant has not met that burden.

**ORDER:** The appeal is dismissed.