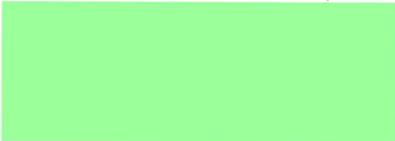


(b)(6)

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

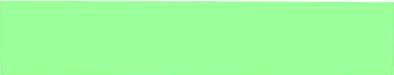


Date: **APR 09 2013**

Office: DES MOINES, IOWA

FILE: 

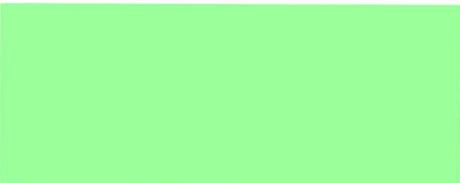
IN RE:

Applicant: 

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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Des Moines, Iowa, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the Field Office Director will be withdrawn, the waiver application will be declared moot, and the appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Kenya who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely representing himself to be a citizen of the United States.¹ The record indicates that the applicant is married to a U.S. citizen and the father of two U.S. citizen children. He 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 his spouse and children.

The Field Office Director found the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming to be a U.S. citizen, that no waiver of that statute was available, and he denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 17, 2012.

On appeal, the applicant, through counsel, asserts that the Field Office Director erred in finding the applicant made a false claim to U.S. citizenship. *Counsel's statement, attached to Form I-290B, Notice of Appeal or Motion*, filed June 18, 2012. Counsel states that it is "well established" that since a misrepresentation made on an Employment Eligibility Verification form (Form I-9) is not made to a U.S. government official, a I-601 waiver is unnecessary. *Id.* Additionally, counsel claims that the applicant did not present any documents that would show that he is a U.S. citizen. *Id.*

The record includes, but is not limited to, counsel's briefs, statements from the applicant and his wife, letters of support, medical documents for the applicant's wife and daughter, financial documents, household and utility bills, school records for the applicant's children, photographs, country-conditions documents for Kenya, and documents pertaining to the applicant's misrepresentation. 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, that:

- (i) In general.—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.—

¹ The AAO notes that Field Office Director's decision and counsel's appeal brief mention section 212(a)(6)(C)(i) of the Act in their inadmissibility discussions; however, that section of the Act refers to fraud or misrepresentation made to a U.S. government official for an immigration benefit, which is not asserted here, while section 212(a)(6)(C)(ii) concerns false claims of U.S. 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, in pertinent part, that:

- (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 application, the record indicates that the applicant was admitted to the United States on April 5, 2001, with an F-1 nonimmigrant visa. On December 23, 2002, the applicant signed a Form I-9, attesting that he was “[a] citizen or national of the United States.” The applicant signed the Form I-9 under penalty of perjury and acknowledged that false statements made on the form would violate federal law. *See Form I-9.*

On appeal, counsel claims that simply checking the box marked “citizen or national of the United States” on a Form I-9 does not constitute a false claim to U.S. citizenship. Counsel states that the applicant did not present any documents showing that he was a U.S. citizen, and he only checked the box to obtain employment. The record reflects that the applicant presented an Iowa driver’s license and Social Security card with his Form I-9.

Counsel cites unpublished AAO and Board of Immigration Appeals (Board) decisions to support his position that simply checking the box marked “citizen or national of the United States” on a Form I-9, without additional evidence, does not constitute a false claim to U.S. citizenship. The AAO notes that unpublished

decisions are not binding on any court or the AAO. While 8 C.F.R. § 103.3(c) provides that precedent decisions of the Secretary of Homeland Security or specific officials of the Department of Homeland Security designated by the Secretary, with concurrence of the Attorney General, are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.10.

The AAO notes that the record establishes that the applicant presented an [redacted] driver's license and Social Security card when he completed the Form I-9. Counsel claims that the applicant obtained his driver's license and Social Security card by showing his passport and his F-1 student visa and not by presenting false documents to show U.S. citizenship. *See also applicant's affidavit*, dated July 12, 2012. In *Aketa v. Ashcroft*, 384 F.3d 954, 957 (8th Cir. 2004), the Eighth Circuit Court of Appeals found that the petitioner made a false claim of U.S. citizenship because in addition to signing the Form I-9, he made "multiple admissions to an INS officer that he had made a false representation of United States citizenship on his Form I-9 in order to procure employment." *See also Rodriguez v. Mukasey*, 519 F.3d 773 (8th Cir. 2008) (alien used a false Texas birth certificate to obtain a driver's license, which he then used to complete Form I-9 to gain employment).

The record does not establish that the applicant claimed U.S. citizenship to immigration officers or any other individuals or that he presented evidence to support a claim that he is a U.S. citizen. The record shows only that he checked the box marked "citizen or national of the United States" on a Form I-9 and presented his own legally obtained driver's license and Social Security card. The Form I-9 question asking whether the individual is a "citizen or national" of the United States is ambiguous, because by checking that box, the individual could be claiming to be either a "national" or a "citizen" of the United States. A claim of being a national of the United States does not make an individual inadmissible under section 212(a)(6)(C)(ii) of the Act. Therefore, the AAO finds that the applicant did not falsely represent himself to be a citizen of the United States, and he is not inadmissible under section 212(a)(6)(C)(ii) of the Act. As such, the waiver application is unnecessary.

ORDER: The appeal is dismissed, the Field Office Director's decision withdrawn, and the waiver application declared unnecessary.