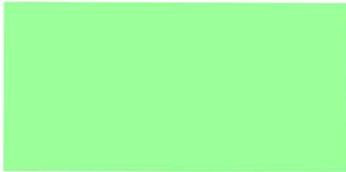




U.S. Citizenship  
and Immigration  
Services

(b)(6)



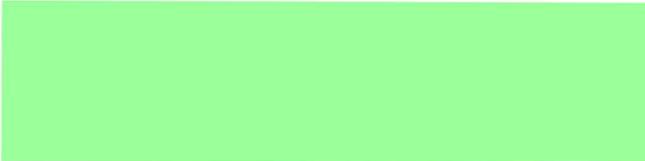
DATE: **MAR 07 2013** OFFICE: PHILADELPHIA, PA

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.

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

(b)(6)

**DISCUSSION:** The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, 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)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for having attempted to procure admission by falsely representing himself to be a citizen of the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The Field Office Director concluded that the applicant was ineligible for a waiver due to his false claim to U.S. citizenship, and that he was also inadmissible pursuant to section 212(a)(9)(C) of the Act for having entered the United States without inspection after expedited removal. *See Decision of Field Office Director*, dated July 25, 2012. The application was accordingly denied. *Id.*

On appeal, counsel contends that the applicant should not be deemed inadmissible pursuant to section 212(a)(9)(C) of the Act because his due process rights were violated with respect to his removal. Counsel further asserts that, if the applicant's motion to reopen his removal proceedings is granted, he will no longer be inadmissible pursuant to section 212(a)(9)(C) of the Act.

The record includes, but is not limited to, statements from the applicant, a psychological evaluation, documentation of criminal and removal proceedings, other applications and petitions, photographs, and evidence of birth and marriage. The entire record was reviewed and considered in rendering 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.

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (ii) 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 alien 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.

The record reflects that, on October 14, 2004, the applicant was a passenger in a vehicle, and applied for admission into the United States. He declared himself to be a U.S. citizen when, in fact, he was a citizen of Mexico. The applicant was placed into expedited removal proceedings and criminal proceedings. After pleading guilty to violating 8 U.S.C. §1325(a)(3), for attempting to enter the United States by falsely misrepresenting a material fact, a U.S. Magistrate Judge found the applicant guilty and imposed judgment on October 26, 2004. In expedited removal proceedings, the applicant admitted he was a native and citizen of Mexico, not the United States. *Sworn statement*, November 1, 2004. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act for having falsely represented himself to be a U.S. citizen, and he was ordered removed under section 235(b)(1) of the Act. *Form I-860, Notice and Order of Expedited Removal*, November 1, 2004. He admits he entered without inspection thereafter. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. There is no waiver available for this ground of inadmissibility.

Furthermore, the applicant is also inadmissible pursuant to section 212(a)(9)(C) of the Act. Section 212(a)(9) of the Act states, in pertinent part:

....  
(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(b)(6)

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission....

The applicant was ordered removed under section 235(b)(1) of the Act on November 1, 2004, and subsequently reentered the United States without inspection. He is therefore inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, though, as he is permanently inadmissible for his false claim to U.S. Citizenship, no purpose would be served in discussing any relief from this ground of inadmissibility.

Counsel asserts that the applicant's order of removal should be invalidated because his due process rights were violated, and consequently, the applicant would no longer be inadmissible pursuant to section 212(a)(9)(C) of the Act. However, the validity of a removal order is not within the AAO's jurisdiction to determine. Therefore, the AAO will not address counsel's contentions on this matter.

Counsel additionally asserts that, if the applicant's motion to reopen removal proceedings with U.S. Immigration and Customs Enforcement (ICE) is granted, the applicant will no longer be inadmissible pursuant to section 212(a)(9)(C) of the Act. The record reflects, however, that the applicant's motion to reopen has since been denied.<sup>1</sup> See *Decision of ICE Field Office Director*, December 12, 2012. As such, the applicant remains inadmissible pursuant to section 212(a)(9)(C) of the Act, in addition to inadmissibility pursuant to section 212(a)(6)(C)(ii) of the Act.

In proceedings for a waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> In the decision, the Field Office Director found that the removal order was valid and appropriate, and as such, no legitimate reason existed to undo the order. *Decision of ICE Field Office Director*, December 12, 2012.