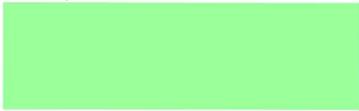




U.S. Citizenship  
and Immigration  
Services

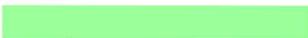
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Date: **MAR 25 2013**

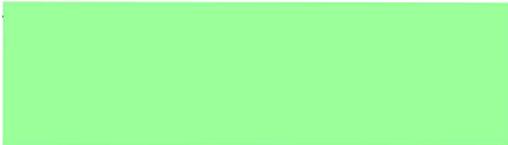
Office: LOS ANGELES

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
for

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The applicant is a native and citizen of Mexico who attempted to enter the United States on July 19, 1998 using a false name and date of birth, and claiming to be a US Citizen, born in San Diego, California. The applicant 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 seeking admission to the United States through fraud or misrepresentation, and under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely representing himself to be a citizen of the United States, and was removed from the United States. The applicant subsequently reentered the United States without inspection.

The applicant is the husband of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. 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 with his spouse.

In a decision dated July 10, 2009, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly.<sup>1</sup> See *Decision of the Field Office Director*, July 10, 2009.

The AAO, reviewing the applicant's Form I-601 on appeal, found the applicant to be inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, as the applicant attempted to enter the United States on July 19, 1998 falsely claiming to be a U.S. Citizen.<sup>2</sup> Consequently, the appeal was dismissed. See *Decision of the AAO*, dated February 13, 2012.

On motion to reopen, counsel contends that the applicant made a timely retraction of his false claim of U.S. citizenship, and therefore should not be deemed inadmissible under 212(a)(6)(C)(ii) of the Act.

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<sup>1</sup> The AAO notes that the field office director, in his decision of July 10, 2009, found the applicant to be only inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation, and not under section 212(a)(6)(C)(ii) of the Act for falsely claiming U.S. citizenship, even though the field office director states in the decision that the applicant "knowingly declared U.S. citizenship with the intent to deceive the United States Government." The AAO further notes that, in a decision dated January 31, 2008 denying the applicant's application for status as a permanent resident, the field office director found that the applicant was inadmissible under section 212(a)(6)(C)(ii) of the Act for falsely claiming U.S. citizenship.

<sup>2</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

The record contains the following documentation: a brief submitted by the applicant's attorney with the Form I-290B Notice of Appeal or Motion in support of the attorney's contention that the applicant made a timely retraction of his false claim of U.S. citizenship; and documentation submitted in support of the applicant's previously filed Form I-290B Notice of Appeal or Motion, and Form I-601 Application for Waiver of Grounds of Inadmissibility. 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).

The record indicates that the applicant attempted to enter the United States at San Ysidro Port of Entry on July 19, 1998 as a U.S. citizen, claiming he was born in San Diego, California. The applicant was referred to secondary inspections. Upon secondary inspection, the applicant admitted that he was born in Mexico, and that he knowingly declared U.S. citizenship with the intent to deceive the United States government. He was found to be inadmissible under section 212(a)(6)(C)(ii) of the Act, and was removed from the United States. *See Form I-213, Record of Deportable/Inadmissible Alien.* There is no waiver available for this ground of inadmissibility.

On appeal, counsel contends that the applicant made a timely retraction of the misrepresentation that he was a U.S. citizen, as he corrected himself after being referred to secondary inspection, and therefore the applicant is not inadmissible under section 212(a)(6)(C)(ii) of the Act for a false claim of U.S. citizenship. Counsel admits that the applicant did state in primary inspection that he was a United States citizen, and after he was referred to secondary inspection the applicant truthfully stated that he was from Mexico. Thus, it was only after the applicant was referred to secondary inspection

that the applicant admitted that he was not born in the United States, and that his true place of birth was Mexico. As such, the applicant's retraction was not made at the first opportunity,<sup>3</sup> but rather was made after the fact that he had been referred to secondary inspection.

Counsel contends that at the time the applicant was ordered removed on July 20, 1998, the immigration inspector held that the applicant was inadmissible and removable pursuant to Section 212(a)(6)(C)(i) of the Act for misrepresentation, rather than Section 212(a)(6)(C)(ii) of the Act for falsely claiming U.S. citizenship. However, the record contains Form I-213, Record of Deportable/Inadmissible Alien, dated July 20, 1998, filed by the immigration inspector, which states that the applicant knowingly declared U.S. citizenship with the intent to deceive the United States government, and clearly indicates that the applicant is in violation of section 212(a)(6)(C)(ii) of the Immigration and Nationality Act.

In the brief in support of motion regarding counsel's contention that the applicant made a timely retraction, counsel refers to two cases from the Board of Immigration Appeals (BIA): *Matter of M*, 9 I&N Dec. 118 (BIA 1960); and an unpublished decision of the BIA, dated September 29, 2003. In *Matter of M*, the BIA held that the respondent made a voluntary and timely retraction, stating that the respondent voluntarily and prior to any exposure of the attempted fraud corrected his testimony. In this particular case, the applicant's attempted fraud was exposed by the immigration inspector as the applicant was referred to secondary inspection. Both cases referred to by counsel cite the case of *Matter of R--R--*, 3 I&N Dec. 823 (BIA 1949) as a precedent for establishing timely retractions in immigration proceedings. The AAO notes that in *Matter of R--R--*, the facts of the case indicate that the right after executing an affidavit, the appellant admitted to the primary inspector that he had lied. The BIA ruled in *Matter of R--R--* that because the appellant voluntarily and prior to the exposure of the attempted fraud corrected his statements, he was deemed to have made a timely retraction.

Moreover, the USCIS Adjudicator's Field Manual includes a section on Misrepresentation and False Claim to U.S. Citizenship, which states: "Admitting to the false claim of U.S. citizenship *after* USCIS has challenged the veracity of the claim is not a timely retraction" [emphasis in original]. See *Adjudicator's Field Manual*, Chapter 40.6.29(c): Section 212(a)(6)(C) of the Act: Misrepresentation and False Claim to U.S. Citizenship.

There is no evidence in the record that the applicant voluntarily corrected his false claim to being born in the United States before the veracity of the claim was challenged and he was referred to secondary inspection. As such, the applicant did not make a timely retraction of his false claim to U.S. citizenship, and is inadmissible under 212(a)(6)(C)(ii) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, states that whenever any person makes an application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible under any provision of this Act. The burden never shifts to the government to prove admissibility

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<sup>3</sup> The Foreign Affairs Manual, at 9 FAM 40.63 N4.6 Timely Retraction, states: "Whether a retraction is timely depends on the circumstances of the particular case. In general, it should be made at the first opportunity."

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during the adjudication of a benefit application, including an application for a waiver. INA § 291; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). The applicant has not met his burden.

Because the applicant is inadmissible under a ground for which no waiver is available, no purpose would be served in discussing whether the applicant has established eligibility for a waiver under section 212(i) of the Act for fraud or misrepresentation or whether he would merit the waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the application remains denied.

**ORDER:** The motion to reopen is granted and the waiver application remains denied.