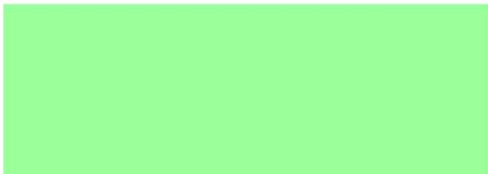


(b)(6)

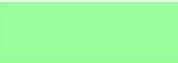
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090

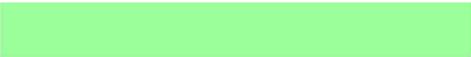


**U.S. Citizenship
and Immigration
Services**



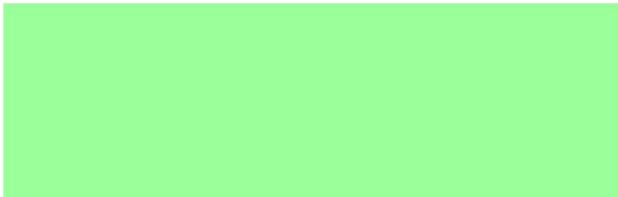
DATE: **MAY 17 2013** Office: ACCRA, GHANA

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,


f-

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Accra, Ghana, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) and (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and (ii), for entering the country under the Visa Waiver Program by using a British passport belonging to another person and for falsely claiming to be a citizen of the United States for any purpose or benefit under the Act, as well as under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for one year or more, and section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), for seeking readmission within 10 years after being deported. The applicant seeks a waiver of inadmissibility in order to immigrate to the United States and reside with his family.

The field office director concluded the applicant was inadmissible under section 212(a)(6)(C)(ii) of the Act, for which no waiver is available, and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, December 1, 2011. The field office director subsequently denied a motion to reopen and reconsider the decision to deny the Form I-601. *Decision of the Field Office Director*, July 6, 2012.

On appeal, counsel contends that the field office director erred in concluding that the applicant was inadmissible under section 212(a)(6)(C)(ii) of the Act and thus also erred in failing to address whether the applicant had established that his inadmissibility would result in extreme hardship to his U.S. citizen spouse. The record also includes, but is not limited to: documentation supporting the applicant's waiver application and Application to Register Permanent Residence or Adjust Status (Form I-485), as well as records and transcripts of removal proceedings. The entire record was reviewed and all relevant information considered in reaching this decision.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(a)(6)(C)(ii) provides, in pertinent part:

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 274A¹) or any other Federal or State law is inadmissible.

Section 212(a)(6)(C)(iii) provides, "For provision authorizing waiver of clause (i), see subsection (i)," but does not provide for a waiver of section 212(a)(6)(C)(ii) of the Act.

¹ Section 274A of the Act, 8 U.S.C. § 1324A addresses various aspects of employment of aliens.

According to the record, the applicant used an altered British passport to procure U.S. admission on January 21, 2001 under the Visa Waiver Program and, on July 3, 2001, claimed on an Employment Eligibility Verification (Form I-9) to be a U.S. citizen or national. The record contains the applicant's March 31, 2004 admission during removal proceedings to having falsely claimed on Form I-9 to be a U.S. citizen or national in order to obtain a job. The Immigration Judge concluded, regarding the false citizenship claim, "the respondent admitted that he did make a claim that he was a U.S. citizen in order to acquire employment," that "[h]e did, however, well know that he was not a United States citizen," and that his asserted ignorance did not negate his removability. Counsel asserts on the Notice of Appeal that the applicant "may reasonably have believed that ... he owed 'permanent allegiance' ... to the US," and thus could have meant to claim he was a national rather than a U.S. Citizen when filing out Form I-9. The applicant makes no such claim, and the transcript from his removal proceedings does not indicate that the applicant ever stated he was confused over the meaning of the term or believed himself to be a "national of the United States."

Under section 291 of the Act, 8 U.S.C. § 1361, the burden of proving eligibility for an inadmissibility waiver remains entirely with the applicant. The applicant fails to establish that he did not understand the plain meaning of the phrase "citizen or national of the United States," or that he intended to state that he was a national rather than a citizen when he selected it to describe his status on Form I-9. *See Crocock v. Holder*, 670 F.3d 400 (2nd Cir. 2012) (holding that an alien has not met his burden of showing he claimed to be a national, not a citizen, where the alien admitted before an immigration judge having claimed on Form I-9 to be a U.S. citizen and where counsel pointed to no evidence showing the applicant thought he was a U.S. national when completing the Form I-9); *see also Kirong v. Mukasey*, 529 F. 3d 800 (8th Cir. 2008); *Theodros v. Gonzalez*, 490 F.3d 396 (5th Cir. 2007); and *Ateka v. Ashcroft*, 384 F.3d 954 (9th Cir. 2004).

The provisions of section 212(a)(6)(C)(ii) relating to false claims to U.S. citizenship were added to the Act as part of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Section 212(i) provides a waiver to aliens found inadmissible under section 212(a)(6)(C)(i), but the applicant is inadmissible under 212(a)(6)(C)(ii) for making a false claim to citizenship and no waiver is available to such an individual. The AAO thus need not determine whether he has established that a qualifying relative would experience extreme hardship were the applicant not granted a waiver of any other statutory inadmissibility grounds.

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 met that burden and, accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.