



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **APR 25 2014**

OFFICE: LOS ANGELES

FILE: [Redacted]

IN RE: [Redacted]

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:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

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Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California denied the waiver application. A subsequent appeal was denied by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted and the prior decision of the AAO will be affirmed.

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 attempting to procure entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the applicant is also inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act and denied the application accordingly. *See Decision of the Field Office Director*, dated September 17, 2009. On appeal, the AAO determined that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act, in addition to section 212(a)(6)(C)(ii) of the Act, and dismissed the appeal accordingly. *See Decision of the AAO*, dated April 25, 2012.

On motion, counsel for the applicant asserts that the applicant is eligible for a waiver and adjustment of status because of her reliance upon Ninth Circuit case law and the assurances of an immigration officer upon her attempted entry to the United States.

The entire record was reviewed and considered in rendering a decision on the motion.

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 November 29, 1997, the applicant attempted to enter the United States at the San Ysidro port of entry by presenting a United States birth certificate belonging to another individual. Upon further questioning in secondary inspection, the applicant admitted to being a citizen and national of Mexico. The applicant was ordered removed from the United States pursuant to expedited removal proceedings on December 1, 1997 and removed from the United States on the following day. The applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for making a false claim to United States citizenship and does not dispute this ground of inadmissibility on motion.

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.

(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.

As noted, the applicant was removed from the United States on December 2, 1997 pursuant to an expedited removal order. The applicant subsequently entered the United States without admission or parole on December 12, 1997. Accordingly, the applicant is also inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for entering the United States without admission or parole subsequent to her removal.

Counsel for the applicant asserts that the applicant is not inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act because she was informed by an immigration officer at the time of her attempted entry that she could withdraw her attempt to enter, as her spouse could subsequently file a petition on her behalf. Counsel further asserts that the applicant is not inadmissible under this ground due to her reliance upon the Ninth Circuit's decision in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). It is noted that the applicant was personally served with a Form I-860 on December 1, 1997 ordering her removed from the United States under section 235(b)(1) of the Act.

Further, the applicant is also inadmissible under section 212(a)(6)(C)(ii) of the Act for making a false claim to U.S. citizenship on November 29, 1997, a ground of inadmissibility for which there is no available waiver. As the applicant is statutorily ineligible for a waiver of inadmissibility, the AAO will not address counsel's assertions concerning the applicant's inadmissibility under section 212(a)(9)(C)(i)(II) of the Act.

In application proceedings, 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 prior decision of the AAO is affirmed.

ORDER: The motion is granted and the prior decision of the AAO dismissing the appeal is affirmed