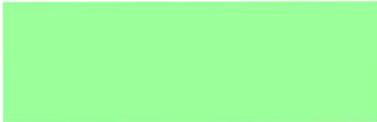




U.S. Citizenship
and Immigration
Services

(b)(6)

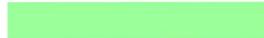
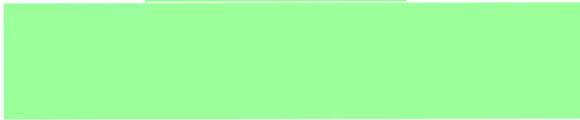


DATE: **DEC 03 2014**

OFFICE: PHILADELPHIA

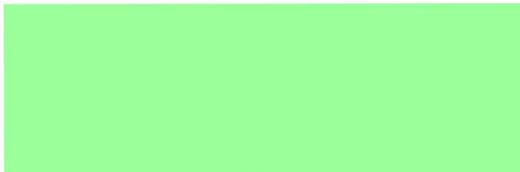
File: 

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 (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,



Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Egypt 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 having falsely represented herself as a citizen of the United States. The applicant, through counsel, contests this finding, and in the alternative, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside with her U.S. citizen sons and spouse in the United States.

The Field Office Director determined a waiver is not available for the ground of inadmissibility and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated June 9, 2014.

On appeal, counsel asserts U.S. Citizenship and Immigration Services (USCIS) erroneously determined the applicant is inadmissible, as she did not willfully misrepresent material facts to procure entry into the United States, and in the alternative, she timely retracted her misrepresentation and is eligible for a waiver under section 212(i) of the Act. Counsel also asserts the applicant's U.S. citizen child will experience extreme hardship, and USCIS erred by failing to favorably exercise its discretion. *See Form I-290B, Notice of Appeal or Motion*, dated June 30, 2014; *see also Brief in Support of the Appeal*, dated July 3, 2014.

The record includes, but is not limited to: briefs; correspondence; affidavits by the applicant and her spouse; letters of support; documents concerning identity and relationships; employment and financial documents; some of the applicant and her spouse's conviction records; and documents about conditions in Egypt. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(C) Misrepresentation.-

(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.-

(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 ... 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).

The record reflects that the applicant's spouse paid an individual for falsified U.S. birth certificates to present with the applicant and her spouse's applications for a U.S. passport. Evidence in the record shows that the applicant completed a passport application and her spouse submitted it on her behalf to a passport agency office in Florida around April 28, 1999. The record also reflects that on January [REDACTED], in the U.S. District Court for the [REDACTED] the applicant pled guilty to and was convicted of violating 18 U.S.C. § 911 for having provided a false statement in support of her application for a U.S. passport. At the time of the applicant's conviction, 18 U.S.C. § 911 provided, "[w]hoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both."

We find counsel's contention that the applicant is not inadmissible under section 212(a)(6)(C)(ii) of the Act because she did not willfully misrepresent material facts to procure entry into the United States to be unpersuasive. The record reflects that the applicant willfully misrepresented herself as a U.S. citizen to procure an immigration benefit under the Act, namely, a U.S. passport. *See Matter of Barcenas-Barrera*, 25 I&N Dec. 40 (BIA 2009) (finding a U.S. passport to constitute a benefit under the Act). Moreover, prior to September 30, 1996, aliens obtaining or seeking to obtain benefits under the Act by falsely claiming to be U.S. citizens were inadmissible under section 212(a)(6)(C)(i) of the Act. Section 212(a)(6)(C)(ii) of the Act applies only to false claims to U.S. citizenship made on or after September 30, 1996. *See Memorandum from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, "Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators,"* dated March 3, 2009. The record reflects that the applicant's passport application was submitted around April 28, 1999.

However, a timely retraction will serve to purge a false representation of U.S. citizenship and remove it from further consideration as a ground for section 212(a)(6)(C) eligibility. *See, e.g., 9 FAM 40.63 N4.6.* Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.*

The record reflects the applicant had no intention of revealing her true citizenship when applying for a U.S. passport. She admitted that the information contained in her application and its

supporting documentation were false only after being indicted. Therefore, the applicant cannot be said to have been acting timely to purge the misrepresentation of her citizenship.

The Act makes clear that a foreign national must establish admissibility “clearly and beyond doubt.” See section 235(b)(2)(A) of the Act. See also 240(c)(2)(A) of the Act. The same is true for admissibility in the context of an application for adjustment of status. See *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008). See *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008); see also *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). Based on the foregoing, the applicant was correctly found to have made a false claim to U.S. citizenship, and thereby, she is inadmissible under 212(a)(6)(C)(ii)(I) of the Act. The record does not reflect that the applicant meets the requirements for an exception to inadmissibility as stated in 212(a)(6)(C)(ii)(II). Further, we find that a waiver is not authorized for inadmissibility under section 212(a)(6)(C)(ii) of the Act.

As the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act, she is currently statutorily ineligible to apply for a waiver of grounds of inadmissibility. As such, no purpose would be served in determining whether she warrants a favorable exercise of discretion.¹

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

¹ The record reflects the applicant also may be inadmissible for criminal convictions in New York. However, as the applicant is statutorily ineligible for a waiver, we will not consider her potential criminal inadmissibilities.