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

(b)(6)

U.S. Citizenship and Immigration Services

Date: SEP 23 2014 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v), and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), section 212(d)(11) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(d)(11).

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 Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), and section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Director concluded that the applicant was inadmissible under section 212(a)(6)(C)(ii), for which there is no waiver of admissibility available, and denied the waiver as a matter of discretion on January 21, 2014.

On appeal, counsel for the applicant asserts that the Director's decision was in error and that the record does not support that the applicant is inadmissible for a false claim to citizenship under section 212(a)(6)(C)(ii). The applicant's spouse asserts that he will suffer extreme hardship if the applicant is not allowed to return to the United States.

The record includes, but is not limited to, a brief from counsel; statements from the applicant and her spouse; copies of tax returns for the applicant's spouse; copies of phone bills for the applicant's spouse; copies of business registration documents for the applicant's spouse's restaurant; a psychological report on the applicant's spouse; copies of birth certificates for the applicant's spouse's children; photographs of the applicant, her spouse and their children; bank account statements for the applicant's spouse; copies of child support orders for the applicant's spouse relating to a prior marriage; and background materials on single-parenthood.

Section 212(a)(6)(C) of the Act, Misrepresentation, provides, in pertinent part, that:

(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.

. . . .

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [*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 Attorney General [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.

A police report contained in the record details an investigation by the Police Department into an identity theft. An individual contacted the police department and notified them that she was receiving correspondence from the Social Security Administration and Internal Revenue Service indicating that she was earning income, which she was not. The police department tracked down the employer listed on the social security statement, where they made contact with the applicant. The applicant admitted to the police that she had been using someone else's name and social security number in order to obtain employment since September 2000, a period of six years.

The Immigration and Nationality 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 *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008).

The applicant has not met her burden of proving she is not inadmissible under section 212(a)(6)(C)(ii) of the Act. As of November 6, 1986, all employers are required to have new employees complete a Form I-9, identifying their citizenship or immigration status by checking one of four boxes: U.S. citizen, non-citizen national of the United States, lawful permanent resident, or alien authorized to work. In conjunction with the Form I-9, new employees must present documents to establish identity and employment authorization. In the instant case, the record does not contain a copy of the Form I-9 completed by the applicant. Similarly, there is no evidence in the record showing which documents the applicant submitted in order to establish her identity and employment authorization. According to the List of Acceptable Documents on Form I-9, a social security card alone is insufficient to establish both identity and employment authorization. The applicant denies that she stated to the consular officer that she knew that the document belonged to a U.S. citizen. The applicant has not submitted competent, independent, objective evidence pointing to where the truth lies. Accordingly, the applicant has not met her burden of proving she did not make a false claim to U.S. citizenship to obtain employment. There is no waiver available for inadmissibility under section 212(a)(6)(C)(ii) of the Act and the appeal must be dismissed.

The record indicates that the applicant attempted to enter the United States with her daughter on a visitor's visa she had obtained by failing to reveal her prior period of unlawful residence. Upon secondary inspection the applicant's daughter stated that the applicant had paid a coyote and the applicant admitted to misrepresenting material facts on her visitor's visa application. The applicant's visa was revoked and she was removed pursuant to section 235(b)(1) of the Act. As such, the applicant is inadmissible pursuant to section 212(a)(6)(E) of the Act for assisting another alien to enter the United States in violation of law. The applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for having failed to reveal a prior period of unlawful presence when applying for a visitor's visa and section 212(a)(9)(B) of the Act for her unlawful presence. In addition, the applicant is inadmissible under section 212(a)(9)(A) of the Act as an alien removed from the United States pursuant to section 235(b)(1) of the Act. As the applicant is inadmissible based on section 212(a)(6)(C)(ii), for which there is no waiver, there is no purpose in discussing these additional grounds of inadmissibility.

The applicant is inadmissible under § 212(a)(6)(C)(ii) for falsely claiming to be a U.S. citizen. There is no waiver available for this ground of inadmissibility. As such, the applicant's appeal will be dismissed as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.