



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **AUG 18 2015**

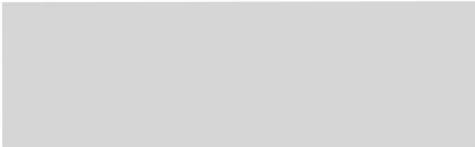
FILE: [REDACTED]

APPLICATION RECEIPT: [REDACTED]

IN RE: Applicant: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, San Antonio, Texas, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure 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 making a false claim to U.S. citizenship. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her U.S. citizen spouse and daughter.

The field office director determined that there is no waiver available for inadmissibility under section 212(a)(6)(C)(ii) of the Act and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated September 18, 2014.

On appeal the applicant contends that her spouse will suffer extreme hardship if he remains in the United States without her or if relocates to join her. With the appeal the applicant submits updated statements from herself and her spouse, educational documentation for the applicant and her spouse, financial documentation, child custody documentation for the children of the applicant and of her spouse, and scholastic certificates for their children. Evidence submitted to the record includes previous statements from the applicant and her spouse; medical documentation for the applicant, her spouse, and her child; school records and certificates of achievement for her daughter; financial documentation; letters of reference; divorce certificates for the applicant and her spouse; a death certificate for the applicant's first husband; and other evidence submitted in conjunction with applications filed by the applicant.<sup>1</sup> The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides that:

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

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<sup>1</sup> The record shows that a Petition for Alien Relative (Form I-130) filed on behalf of the applicant by her first husband and an Application to Adjust Status (Form I-485) filed by the applicant were denied on June 5, 2004. The applicant's Application for Temporary Protected Status (Form I-821) was approved on March 20, 2000, but was withdrawn on December 18, 2013.

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 or about May 8, 1996, the applicant entered the United States without inspection. The record further reflects that on June 23, 1999, the applicant attempted to enter the United States at the [REDACTED] Texas, Port of Entry by presenting a border crossing card issued in the name of another person, and was returned to Mexico as she claimed to be a citizen of Mexico rather than Honduras. Although on appeal the applicant does not contest that she attempted to enter the United States using a document bearing the name of another person, she contends that she did so at a traumatic time in her life and that she had gone to Mexico for medical treatment. As the applicant knowingly presented documentation with false information in an effort to gain admission to the United States, we concur with the field office director's finding that the applicant is inadmissible for fraud or misrepresentation.

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

- (i) *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 (or, in the case of an adopted alien, each adoptive 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.

The record also reflects that on February 16, 2003, the applicant attempted re-enter the United States at the [REDACTED] Texas, Port of Entry by claiming to be a United States citizen. On appeal the applicant has not addressed this finding, however, in a January 9, 2014, statement the applicant contends that when attempting to re-enter the United States she did not understand the questions asked by immigration officers due to language issues, that she answered “yes, sir” because a friend had instructed her to always do so, and that she immediately retracted her response. The applicant states that she had taken her daughter to Mexico so a friend could provide childcare while the applicant worked, and when returning to the United States was questioned by officers who did not speak Spanish. The applicant asserts that as she feared she may have answered incorrectly that she was U.S. citizen she quickly explained to officers that she was residing in the United States and presented evidence that she had temporary protected status. The applicant asserts that she and

the officers did not understand each other, eventually she was told to return to Mexico, and two days later she entered the United States by crossing the [REDACTED] River.

The applicant has asserted that she immediately corrected her response that she was a U.S. citizen and that a timely and voluntary retraction of a statement will outweigh a misrepresentation and false claim of citizenship. The applicant referred to the Foreign Affairs Manual (FAM), 9 FAM 40.63 N4.6, that specifies that a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for INA 212(a)(6)(C)(i) inadmissibility and that, in general, it should be made at the first opportunity.

The doctrine of timely recantation is of long standing and ameliorates what would otherwise be an unduly harsh result for some individuals. See *Llanos-Senarillos v. United States*, 177 F.2d 164, 165-66 (9th Cir. 1949). The Board of Immigration Appeals has recognized the virtue of applying that principle when an alien “voluntarily and prior to any exposure of the attempted fraud corrected his testimony that he was an alien lawfully residing in the United States.” *Matter of M—*, 9 I. & N. Dec. 118, 119 (BIA 1960); see also *Matter of R— R—*, 3 I. & N. Dec. 823, 827 (BIA 1949). In addition, the BIA has found “recantation must be voluntary and without delay.” *Matter of Namio*, 14 I. & N. Dec. 412, 414 (BIA 1973). And when the so-called retraction “was not made until it appeared that the disclosure of the falsity of the statements was imminent, [it] is evident that the recantation was neither voluntary nor timely.” *Id.*

According to the USCIS Policy Manual, for the retraction to be effective, the applicant must correct his or her representation before being exposed by the officer or U.S. government official or before the conclusion of the proceeding during which he or she gave false testimony. USCIS Policy Manual, Volume 8: Admissibility, Part J, Chapter 3. The Foreign Affairs Manual also specifies that “[i]f the applicant has personally appeared and been interviewed, the retraction must have been made during that interview.” 9 FAM 40.63 N4.6.

Although the applicant contends she made a timely retraction of her response to immigration officers, the record does not support her assertion. The records shows that the applicant responded to immigration officers that she was a U.S. citizen and that she had been born in [REDACTED] Texas. The record shows that the applicant was referred to a secondary inspection where, after further questioning, she admitted to not being a U.S. citizen, but claimed to have been born in Mexico, and that she then was returned to Mexico. The record does not support that the applicant made a timely retraction, thus we concur with the field office director’s finding that she is inadmissible for making a false claim to U.S. citizenship.

Applicants making false claims to U.S. citizenship on or after September 30, 1996, the date of enactment of IIRIRA, are inadmissible under section 212(a)(6)(C)(ii)(I) of the Act and are ineligible for waiver consideration. No waiver is available for a violation of section 212(a)(6)(C)(ii)(I) and the record fails to demonstrate that the applicant qualifies for the exception described in section 212(a)(6)(C)(ii)(II). As there is no waiver of this permanent ground of inadmissibility, no purpose would be served in examining the applicant’s eligibility for a waiver of any other ground of inadmissibility. The appeal will therefore be dismissed.

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*NON-PRECEDENT DECISION*

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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.