



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-G-Z-

DATE: DEC. 30, 2015

APPEAL OF EL PASO FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director, El Paso Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

In a decision dated March 13, 2015, the Director determined the Applicant had not established extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. In a separate decision denying the Applicant's Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, the Director found the Applicant to be inadmissible under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for attempting to procure admission to the United States by falsely claiming to be a U.S. citizen. Noting that no waiver is available for this ground of inadmissibility, the Director denied the Form I-212 as no purpose would be served in granting the application for permission to reapply.¹

On appeal, the Applicant contends that the waiver denial was based solely on an erroneous factual finding that he made a false claim to U.S. citizenship and asserts that he is not permanently inadmissible for making such a claim. Claiming that he is inadmissible only for being unlawfully present in the United States, the Applicant asserts that he is entitled to a waiver for showing extreme hardship to his wife. The entire record was reviewed and considered in rendering a decision on the appeal.

We note that the Applicant filed the Form I-601 in December 2013, but the record does not contain a Form I-485, Application to Register or Adjust Status. A Form I-601 may be filed by applicants for adjustment of status or temporary protected status, or by applicants for immigrant visas or certain nonimmigrant visas, provided they are outside the United States and have been found inadmissible after a visa interview with a consular officer. *See Instructions for Form I-601*. The record indicates that the Applicant is in the United States and had no adjustment of status application pending at the

¹ The Applicant did not appeal the denial of the Form I-212, which was separately denied on the same date as his Form I-601.

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time he filed the Form I-601. As there is no underlying application on which to base an application for waiver of grounds of inadmissibility, the Form I-601 was improperly filed, and the Applicant is ineligible to apply for a waiver of inadmissibility at this time.

Further, even if the applicant were eligible to apply for waiver of inadmissibility at this time, we note that he is inadmissible under section 212(a)(6)(C)(ii), for which no waiver is available.

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

(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 . . . is inadmissible.

.....

(iii) Waiver Authorized

For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides a waiver to aliens found inadmissible under section 212(a)(6)(C)(i) of the Act. The Applicant, however, is inadmissible under section 212(a)(6)(C)(ii) for making a false claim to U.S. citizenship, and no waiver is available for this ground of inadmissibility.

The record reflects that the Applicant attempted to enter the United States on January 8, 2005, by applying for admission as a pedestrian claiming orally to be a U.S. citizen. Asked to provide proof of citizenship, he presented a New Mexico identification card bearing his photograph. After being referred to secondary inspection, he admitted being a Mexican citizen without travel documents to enter the country and stated he was returning to [REDACTED] New Mexico, where he was living. The Applicant was charged with inadmissibility under section 212(a)(6)(C)(ii) of the Act and ordered removed pursuant to section 235(b)(1) of the Act. Further, a criminal complaint was filed against the Applicant charging him with attempting to enter the United States by representing himself to be a citizen of the United States, and he was convicted on [REDACTED] 2005, of attempting to enter the

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United States by making a willfully false and misleading representation, in violation of 8 U.S.C. § 1325(a)(3), after pleading guilty to this offense.

The Applicant was removed from the United States on January 28, 2005. Immigration records show that on February 2, 2005, the Applicant reentered the country without being admitted.² He was issued a Form I-871, Decision to Reinstate Prior Order, and his prior removal order was reinstated pursuant to section 241(a)(5) of the Act. He was removed from the United States pursuant to the reinstated removal order on June 1, 2005. It is not clear from the record when the Applicant returned to the United States.

The Applicant disputes that he is inadmissible under section 212(a)(6)(C)(i) and (ii) of the Act for falsely claiming U.S. citizenship. He asserts that he did not make a false citizenship claim, but rather presented his New Mexico ID card when asked for photo identification. Immigration records indicate, however, that the Applicant was referred to secondary inspection after seeking admission by claiming to be a U.S. citizen, and only at that time admitted he was a citizen of Mexico. As a result, he was found inadmissible under section 212(a)(6)(C)(ii) of the Act and ordered removed. Further, as noted above, the Applicant pled guilty to a criminal complaint charging him with making a false claim to U.S. citizenship and was convicted of attempting to enter the United States by making a false representation in violation of 8 U.S.C. § 1325(a)(3). The record therefore establishes that the Applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act and is statutorily ineligible for waiver.

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.

Cite as *Matter of M-G-Z-*, ID# 14708 (AAO Dec. 30, 2015)

² Based on his entry without being admitted after being ordered removed from the United States, we note that the Applicant is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II).