



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

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

MATTER OF P-S-L-

DATE: NOV. 23, 2015

APPEAL OF LOS ANGELES FIELD OFFICE DECISION

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

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

On February 26, 2015, the Director determined that the Applicant was inadmissible for seeking admission into the United States by fraud or willful misrepresentation, and that he had not established statutory eligibility to apply for a waiver of inadmissibility.

On appeal, the Applicant submits a brief. The entire record was reviewed and considered in rendering a decision on the appeal.

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) 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).

(b)(6)

Matter of P-S-L-

Section 212(i) of the Act provides:

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.

On appeal, the Applicant asserts that he attempted to procure admission into the United States by presenting a crumpled piece of paper, which he was given while in Mexico. The Applicant contends that at the border he did not claim U.S. citizenship or present a U.S. birth certificate. The Applicant indicates that he believed that the document that he presented at the border was a school certificate from Mexico, and presented it with the intention of explaining that he was seeking asylum.

The Applicant also asserts that the statements in his sworn statement dated June 15, 2000, are inherently unreliable because the statement was not prepared by the Applicant, and was not translated for him and he signed it because he was told to do so. He maintains that the June 15, 2000, sworn statement contains mistakes. He states, specifically, that he does not recall stating that he used a birth certificate to try to enter the United States, that a birth certificate was given to him at the airport, a man in [REDACTED], India, arranged for him to obtain the birth certificate, or that his parents arranged for his flight (as his father was already deceased). The Applicant asserts that at the time he suffered from post-traumatic stress disorder and did not have the capacity to falsely claim U.S. citizenship. He also declares that U.S. Citizenship and Immigration Services did not produce the U.S. birth certificate that the Applicant presented. He contends that even if he had falsely claimed U.S. citizenship, he timely retracted his claim.

The record demonstrates that the Applicant falsely claimed that he was a U.S. citizen when attempting to procure entry to the United States in June 2000. The Applicant admitted in a sworn statement on June 15, 2000, that he attempted to procure admission into the United States by presenting a U.S. birth certificate which he obtained from a man at an airport in [REDACTED] Mexico. Specifically, the Applicant stated that a travel agent in [REDACTED] India, arranged for the Applicant to obtain the U.S. birth certificate in [REDACTED] and that his parents arranged for his travel from India to [REDACTED].

Moreover, the record reflects that in his own declaration submitted in support of his application for asylum and written "under penalty of perjury," "true and correct...nothing is concealed there in because at present my mind is free from any kind of fear after consultation with my attorney," the Applicant stated that "I contacted a travel agent who brought me to this country. He gave me a US birth certificate to enter in this country. While trying to do so, I was arrested at the border."

Further, the record establishes that after presenting the U.S. birth certificate at the port of entry in June 2000, the Applicant was asked by the immigration inspector how long he had lived in the

United States and his answer was all his life. He was also queried as to his high school studies and the record indicates that the Applicant responded that he had graduated. The primary inspector suspected that the Applicant was not the rightful owner of the birth certificate and referred him to secondary inspection for further questioning.

With respect to the Applicant's assertion that he did not understand the statement that he signed on June 15, 2000, we note that the Applicant had the duty and the responsibility to review the statement (and obtain translations if anything was not clear to him) prior to signing.

As to the Applicant's assertion that he timely retracted any false claim to U.S. citizenship, we note that the Form I-213, Record of Deportable/Inadmissible Alien establishes that the Applicant admitted to being an Indian national only after being referred to secondary inspection. The Board of Immigration Appeals has applied the doctrine of timely recantation 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 Board has found "recantation must be voluntary and without delay." *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (finding that an applicant's recantation of false testimony is neither voluntary nor timely if made a year later and only after it becomes apparent that the disclosure of the falsity of the statements is imminent). As such, the Applicant's misrepresentation was not timely or voluntarily recanted.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, the evidence in the record establishes that the Applicant falsely claimed that he was a U.S. citizen in an attempt to procure admission into the United States. Because the Applicant attempted to enter the United States using a fraudulent U.S. birth certificate, he is permanently inadmissible to the United States for making a false claim to U.S. citizenship.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(i) of the Act, 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 appeal will be dismissed.

ORDER: The appeal is dismissed

Cite as *Matter of P-S-L-*, ID# 14340 (AAO Nov. 23, 2015)