



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

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

MATTER OF C-R-D-

DATE: NOV. 23, 2015

APPEAL OF NEBRASKA SERVICE CENTER 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, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Director found the Applicant to be inadmissible to the United States 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. The Applicant is the spouse of a U.S. citizen and has one child who is a U.S. citizen and three who are lawful permanent residents. Concluding the Applicant had presented to a U.S. immigration officer the U.S. birth certificate of another person while misrepresenting herself as that person, and noting that no waiver is available for the Applicant's ground of inadmissibility, the Director denied the application, accordingly. *Decision of the Field Office Director, December 24, 2014.*

On appeal, the Applicant contends that the denial was based solely on an erroneous consular finding that she made a false claim to U.S. citizenship and asserts that she is not inadmissible due to having made a timely retraction of the citizenship claim. 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) 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)(1) 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 [...].

We note that 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 country on July 27, 2008 using the U.S. birth certificate and altered identification of another person. Riding in a vehicle driven by another person, she presented these documents as her own to an immigration inspector during initial processing. After being referred to secondary inspection, she provided a sworn statement admitting having tried to enter the country by using a false name and false documents, confirming she had claimed to be a U.S. citizen, and indicating she took these actions because she wished to be with her husband after having waited over a year for her immigration papers to be processed. *See* Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. On August 18, 2008, the Applicant was permitted to withdraw her application for admission and return voluntarily to Mexico in lieu of being processed for expedited removal after cooperating in the smuggling case against the driver of her vehicle.<sup>1</sup> The Applicant disputes that she is inadmissible under section 212(a)(6)(C)(i) and (ii) of the Act either for, respectively, using fraudulent documents or for falsely claiming U.S. citizenship. She asserts that withdrawal of her application for admission precludes her from being found inadmissible for the misrepresentation and that she timely retracted the false citizenship claim. As we find that the Applicant's actions came too late to comprise a timely retraction, she is unable to overcome the permanent bar of section 212(a)(6)(C)(ii).

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<sup>1</sup> The record shows that she was detained as a material witness and that, after the Applicant aided in the prosecution of her smuggler, a U.S. Magistrate granted the Assistant U.S. Attorney's request to dismiss smuggling charges against the Applicant.

The burden of proving admissibility rests with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. It is undisputed that the Applicant did in fact make a material misrepresentation by presenting to U.S. immigration officials the U.S. birth certificate and Texas driver's license of another person in order to procure admission to the United States. It was after this material misrepresentation that she was sent for further inspection, where she admitted her true identity and having claimed U.S. citizenship in order to circumvent immigrant visa processing. The Applicant's affidavit establishes that she only revealed her true identity and citizenship after having unsuccessfully attempted to procure admission by fraud.

The Applicant cites *Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949), as support for the contention that, where an individual timely and voluntarily recants his false statements, he has not engaged in false testimony. In that case, the BIA was making a determination of whether the alien had committed an act of perjury and found that the perjury was not complete because the alien timely and voluntarily retracted his false statements before the immigration official became aware through other means of the falsity of his statement. 3 I&N Dec. at 827. The BIA 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-*, *supra*. In addition, the BIA 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). 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.

The record shows that the Applicant in the case before us had been taken into secondary inspection and confronted with the fraudulent nature of her travel documents at the time she admitted the truth. She cannot be said to have been acting "voluntarily and timely" prior to the immigration official's awareness of her misrepresentations and fraud, and therefore no timely retraction occurred. The permanent inadmissibility of section 212(a)(6)(C)(ii) of the Act therefore applies.

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.