



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

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

MATTER OF E-R-D-C-

DATE: OCT. 11, 2016

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 for fraud or misrepresentation and for unlawful presence. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i), and § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to that of a lawful permanent resident must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director, Nebraska Service Center, denied the application. The Director concluded that the Applicant was inadmissible for fraud or misrepresentation and for unlawful presence in the United States for one year or more. The Director further concluded that the Applicant's false claim to U.S. citizenship made her ineligible for a waiver of inadmissibility.

The matter is now before us on appeal. In the appeal, the Applicant states that the Director erred in finding that she claimed to be a U.S. citizen.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for a fraud or misrepresentation and unlawful presence, specifically for attempting to obtain admission into the United States in March 1998 by presenting herself as a permanent resident of the United States. Three months later, in June 1998, she obtained entry into the United States by claiming to be a U.S. citizen and remained in the country until she left in April 2006.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), renders inadmissible any foreign national 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 the Act.

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Section 212(i) of the Act provides for a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national.

Under sections 212(a)(6)(C)(ii) and (iii) of the Act, applicants making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. If the false claim was made before September 30, 1996, was made to procure an immigration benefit under the Act, and was made to a U.S. government official, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. INS Policy Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs 3 (April 8, 1998).

Section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i), provides that a foreign national who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(ii) of the Act provides that a foreign national is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent.

## II. ANALYSIS

The Applicant does not contest her inadmissibility for unlawful presence and for misrepresenting herself as a permanent resident. She challenges the Director's determination that she claimed that she was a U.S. citizen to gain entry to the United States in June 1998. She further states that she had demonstrated extreme hardship to her spouse if she is refused admission.

### A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(C)(ii) of the Act for making a false claim to U.S. citizenship. Specifically, at her October 2008 consular interview the Applicant stated under oath that she had last entered the United States at the [REDACTED] port of entry in June 1998 as a passenger in a vehicle driven by a smuggler. She stated that the smuggler presented a U.S. birth certificate on her behalf with her knowledge and that she entered the United States and remained until she left in April 2006.

On appeal, the Applicant asserts that she had not claimed to be a U.S. citizen. She states that she had told the consular officer that she was a passenger in a vehicle and at the border the immigration officer requested the driver's documents and then waived them through. She asserts that she had no knowledge of the driver presenting a birth certificate, and even if he had done this, the immigration officer would have stopped them and ordered that they be removed.

The Applicant's statement contradicts her own testimony, made under oath 7 years ago, in which she described how she gained entry into the United States by having a smuggler present a U.S. birth certificate on her behalf and with her knowledge. Based on her own admission, she is inadmissible for making a false claim to U.S. citizenship. This ground of inadmissibility cannot be waived.

**B. Hardship and Discretion**

Since the Applicant is inadmissible under a ground for which no waiver is available, no purpose would be served in discussing whether she has established eligibility for a waiver under sections 212(i) and 212(a)(9)(B)(v) of the Act or whether she would merit the waiver as a matter of discretion.

**III. CONCLUSION**

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. She is inadmissible for unlawful presence, fraud or misrepresentation, and for making a false claim to U.S. citizenship in June 1998. No waiver is available for a false claim to U.S. citizenship made after September 30, 1996. Accordingly, the appeal is denied.

**ORDER:** The appeal is denied.

Cite as *Matter of E-R-D-C-*, ID# 121571 (AAO Oct. 11, 2016)