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U.S. Department of Homeland Security
U.S. citizenship and Immigration Services
Office of Administrative Appeals MS 2090 0
Washington, DC 20529-2090



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

HG

FILE:

[REDACTED]

Office: BALTIMORE, MD

Date: **AUG 10 2010**

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(C)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[REDACTED]

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Baltimore, Maryland and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China who was found to be inadmissible to the United States under sections 212(a)(6)(C)(i) and (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and (ii), for having attempted to enter the United States through fraud or the willful misrepresentation of a material fact and for making a false claim to U.S. citizenship. The applicant is married to a U.S. citizen and the mother of two U.S. citizens. She seeks a waiver of inadmissibility in order to remain in the United States with her family.

The District Director found that, as the applicant had made a false claim to U.S. citizenship, no waiver was available to her. He denied the waiver application accordingly. *See District Director's Decision*, dated November 17, 2009.

On appeal, counsel for the applicant asserts that the applicant does not require a waiver for her false claim to U.S. citizenship as she immediately retracted this claim during her secondary inspection at the port of entry. *Form I-290B, Notice of Appeal or Motion*, filed December 21, 2009.

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

- (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) 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.

On July 28, 2001, the applicant sought entry to the United States as a returning U.S. citizen, presenting a photo-substituted U.S. passport to a U.S. immigration inspector at the Los Angeles International Airport. During secondary inspection, the applicant voluntarily admitted that she was not a U.S. citizen and that the U.S. passport she had used in her attempt to enter the United States did not belong to her.

Aliens making false claims to U.S. citizenship on or after September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, are inadmissible under section 212(a)(6)(C)(ii)(I) of the Act and are ineligible for waiver consideration. The District Director found that, as the applicant had sought admission to the United States as a returning citizen on July 28, 2001, she was inadmissible under section 212(a)(6)(C)(ii)(I) of the Act and ineligible for any relief.

On appeal, counsel does not contest that the applicant made a false claim to citizenship at the time of her July 28, 2001 arrival in the United States. Instead, he contends that the applicant is not inadmissible under section 212(a)(6)(C)(ii)(I) of the Act based on her immediate, voluntary retraction of her claim to U.S. citizenship in secondary inspection. In support of his claim, counsel cites to *Matter of M*, 9 I&N Dec. 118 (BIA 1960), in which the Board of Immigration Appeals (BIA) held that the respondent who had asserted and then voluntarily retracted his claim to being a lawful permanent resident during the same interview could establish the good moral character necessary for a grant of voluntary departure.

The AAO acknowledges the reasoning in *Matter of M* regarding the timely retraction of a misrepresentation and notes that the Department of State follows similar reasoning in determining whether a misrepresentation on the part of an overseas visa applicant bars his or her admission to the United States under section 212(a)(6)(C)(i) of the Act:

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. Whether a retraction is timely depends on the circumstances of the particular case. In general, it should be made at the first opportunity. If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview.

Foreign Affairs Manual (FAM), Title 9, Section 40.63, Note 4.6.

It is not clear, however, that the reasoning in *Matter of M* or that set forth in the FAM may be extended to false claims to U.S. citizenship. The misrepresentation in *Matter of M* involved a false claim to lawful permanent resident status, a violation of section 212(a)(6)(C)(i) of the Act. The FAM guidance noted above is also limited to misrepresentation under section 212(a)(6)(C)(i) of the Act. The AAO notes that FAM instructions relating to a false claim to citizenship (See 9 FAM 40.63 N11-N15) do not indicate that such a claim may be eliminated as a bar to admission by a timely retraction. While the AAO is not bound by the FAM, it finds the fact that it discusses timely retractions only in relation to section 212(a)(6)(C)(i) inadmissibilities to be persuasive. Accordingly, the AAO does not find that the applicant's false claim to U.S. citizenship may be corrected by a timely retraction.

Even if the AAO were to accept this reasoning, it would not remove the applicant's inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act. The BIA has found respondents to have timely retracted misrepresentations in cases where they used fraudulent documents only *en route* to the United States and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. See, e.g., *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); cf. *Matter of Shirdel*, 18 I&N Dec. 33 (BIA 1984). In *Matter of M*, the respondent immediately retracted his claim to lawful permanent

residency, voluntarily admitting that he had entered the United States unlawfully before completing his statement. The Foreign Affairs Manual also requires the retraction of a misrepresentation to be made without delay, at the first opportunity. In the present matter, the applicant's retraction of her claim to U.S. citizenship was not timely.

Counsel has asserted that the applicant timely retracted her false claim to U.S. citizenship because she admitted during her secondary inspection that she was not a U.S. citizen and was using a fraudulent passport. A sworn statement from the applicant, dated July 29, 2001, establishes that when she was questioned by an immigration inspector in secondary inspection, she freely admitted that she was not a U.S. citizen and that she was carrying a photo-substituted U.S. passport. While the AAO acknowledges that the applicant voluntarily admitted that she had made a false claim to U.S. citizenship, it does not find this admission to have been made at the first opportunity, i.e., during her primary inspection. As the applicant did not retract her claim to U.S. citizenship until she was placed in secondary inspection for questioning, her retraction of her claim to citizenship was not timely.

Based on her presentation of a fraudulent U.S. passport in her attempt to enter the United States, the applicant has made a false claim to U.S. citizenship and is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act. 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 the applicant's inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act statutorily bars her admission to the United States, the AAO finds no purpose would be served in considering whether she might be able to establish eligibility for a waiver of her inadmissibility under section 212(a)(6)(C)(i)(I) of the Act.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Immigration and Nationality 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.