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



U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: MEXICO CITY (PANAMA) Date:

IN RE: Applicant: [Redacted]

OCT 26 2010

PETITION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:



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,
Perry Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii)(I), for falsely claiming U.S. citizenship, and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse.

The acting district director found that the applicant failed to establish extreme hardship to a qualifying relative, failed to establish that the applicant merits a favorable exercise of discretion, and concluded that the applicant is not eligible for a waiver for his false claim to U.S. citizenship. The acting district director denied the application accordingly. *Decision of the Acting District Director*, dated April 25, 2008.

On appeal, counsel asserts, *inter alia*, that the applicant did not knowingly claim to be a U.S. citizen on a mortgage application. Counsel contends the mortgage application was completed by a mortgage broker who assumed the applicant was a U.S. citizen. According to counsel, the applicant's purported claim to U.S. citizenship was either the result of administrative error or the willful misrepresentation of an unethical mortgage broker. *Brief in Support of the Appeal*, undated.

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

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act.

In this case, the record contains two copies of a Uniform Residential Loan Application (Fannie Mae Form 1003) - one copy that is handwritten, and another copy that is typed. In section VIII of the form, subtitled Declarations, the mortgage application asks, “Are you a U.S. citizen?” In both copies, the box is checked or typed, “yes.” In addition, the application asks for marital status and the box that is checked says “Unmarried.” *Uniform Residential Loan Application (Fannie Mae Form 1003)*, dated May 3, 2006. The record indicates that the applicant was married at the time.

On appeal, counsel contends the applicant did not knowingly claim to be a U.S. citizen. In support of this contention, the applicant submits a sworn statement. In his statement, the applicant states that his wife filed for bankruptcy in 2005. He states that his wife told him she had to give up her house in a short sale. The applicant states that he “made up [his] decision to save the house, since [their] family need[ed] a place to live.” The applicant contends his wife and children had lived in that house since 1994 and that “it was only fair for [him] to do [his] best to keep them in the same place.” The applicant states that he “looked for the current owner of the house and [the applicant] bought it from him on May 3, 2006.” According to the applicant, a broker managed the loan application and prepared everything for the closing. The applicant states he did not personally complete the loan application and that he did not claim to be a U.S. citizen. The applicant states that at the closing, his lawyer reviewed each document and passed him the papers that needed to be signed. In addition, the applicant contends that the broker told him to indicate his marital status was single instead of married “due to the bankruptcy report [his] wife had and the records showing she was the former owner of the house.” The applicant concludes that “[w]hatever [he] did wrong, it was forced by the circumstances.” *Sworn Statement of* [REDACTED]

In addition, the applicant submits a letter from the [REDACTED] which states, in pertinent part:

I had taken all the information from [the applicant] and relayed it to [his] processing department in order to process the loan. Please note, at times administrative errors due [sic] occur while processing loan applications. It is possible in the case of [the applicant] that the wrong box may have been accidentally checked off regarding any of the questions on [the applicant’s] loan application. Such mistakes due [sic] occur from time to time and should not automatically be viewed as willful misrepresentations.

Letter from [REDACTED]

After careful consideration of the evidence, the AAO finds that the applicant has not shown that he was erroneously deemed inadmissible under section 212(a)(6)(C)(ii)(I) of the Act. It is first noted

that whether the applicant made a false claim of U.S. citizenship is a factual matter that must be determined from the evidence of record. In this case, the mortgage application clearly states that by signing the application, the applicant attests that “the information provided in this application is true and correct . . . and that any intentional or negligent misrepresentation of this information contained in this application may result in civil liability, including monetary damages, to any person who may suffer any loss due to reliance upon any misrepresentation that I [the applicant] have made on this application, and/or in criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Sec. 1001, et seq.” Furthermore, the application states that the lender or broker “may continuously rely on the information contained in the application, and I [the applicant] am obligated to amend and/or supplement the information provided in this application if any of the material facts that I have represented herein should change” *Uniform Residential Loan Application (Fannie Mae Form 1003), supra.*

Significantly, the applicant does not contest that he signed the mortgage application which stated that he is a U.S. citizen. By signing the application, the applicant not only attested to the accuracy of the information in the mortgage application, but he also committed himself to amending any inaccuracies in the application as well as subjected himself to possible civil and criminal penalties. In addition, the fact that the applicant concedes that he signed the mortgage application intentionally claiming he was single when he was actually married in order to obtain a benefit, undercuts his credibility. Moreover, while the letter from [REDACTED] provides for the possibility that the wrong box may have been checked accidentally, the Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 (“Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant’s explanation that he merely signed all the papers his lawyers passed to him, and [REDACTED] letter providing for the possibility that the wrong box may have been checked, fails to meet this burden.

Accordingly, the record establishes by a preponderance of the evidence that the applicant made a false claim to U.S. citizenship. The applicant’s claim on appeal that his false claim to U.S. citizenship was an inadvertent error attributable to a third party is not persuasive. As the applicant made a false claim to U.S. citizenship after September 30, 1996, he is statutorily ineligible for a waiver of this ground of his inadmissibility. Accordingly, no purpose would be served in considering the merits of the applicant’s Form I-601 waiver application under section 212(a)(9)(B)(v) of the Act since the applicant remains inadmissible under section 212(a)(6)(C)(ii)(I) of the Act. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.