

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

H6

Date: **DEC 17 2012** Office: PANAMA CITY, PANAMA

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i)

ON BEHALF OF APPLICANT:

[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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely representing himself to be a citizen of the United States; and 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 and seeking readmission within ten years of his last departure from the United States.¹ The record indicates that the applicant is married to a U.S. citizen and the father of two U.S. citizen children and a U.S. citizen stepchild. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(9)(B)(v), in order to reside in the United States with his spouse and children.

The Field Office Director found the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii), 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming to be a U.S. citizen and that no waiver of that inadmissibility is available. She denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated October 13, 2011.

On appeal, the applicant, through counsel, asserts that he timely retracted his U.S. citizenship claim. *Counsel's statement, attached to Form I-290B, Notice of Appeal or Motion*, filed November 14, 2011. Moreover, the applicant's wife and children will suffer hardship without the applicant's presence. *Id.* Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's briefs, statements from the applicant and his wife, letters of support, medical documents pertaining to the applicant's stepson, articles on raising children in single-family households, financial documents, photographs, country-conditions documents on Ecuador, criminal conviction documents, documents pertaining to the applicant's misrepresentation, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

....

¹ The AAO notes that the applicant also may be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. The AAO will not address this inadmissibility, however, because the applicant is statutorily ineligible for a waiver.

(II) 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 such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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

(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 (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.

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

Section 212(i) of the Act provides, in pertinent part, that:

- (1) 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 immigrant 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.

In the present application, the record indicates that on July 1, 2001, the applicant entered the United States without inspection. On February 4, 2009, the applicant was encountered at his place of employment by Immigration and Customs Enforcement (ICE) agents and was questioned regarding his citizenship and nationality. He claimed to be a U.S. citizen, born in Puerto Rico; however, when he became evasive and nervous, he was transported to the local ICE office for further questioning. After being interviewed by three Puerto Rican agents for over an hour, the applicant admitted his true name and immigration status. He was then taken into ICE custody. On January 12, 2010, an immigration judge granted the applicant voluntary departure to depart the United States by May 12, 2010. On May 5, 2010, the applicant departed the United States.

Counsel claims that the statute regarding false claims to U.S. citizenship is ambiguous, and under the rule of lenity, "any ambiguity in the statute or its application must be construed in favor of the alien." Counsel cites to *Sandoval v. Holder*, 641 F.3d 982 (8th Cir. 2011), where the court found section 212(a)(6)(C)(ii) of the Act ambiguous as it applies to minors making false claims to U.S. citizenship. In the present case, the applicant was not a minor when he falsely claimed U.S. citizenship, and therefore there is no ambiguity in applying the statute in his case.

In addition, counsel argues that the applicant recanted his false claim to U.S. citizenship in a timely manner, as his recantation was prior to being confronted with contrary evidence. Counsel cites *Matter of R-R-*, 3 I&N 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. The Board of Immigration Appeals (Board) in that case was determining whether an alien had committed an unlawful act of perjury, where an essential element of such offense was that "the offense must be otherwise complete," for purposes of section 101(f)(6) of the Act, 8 U.S.C. § 1101(f)(6), which provides that an individual who has given false testimony cannot be found to be a person of good moral character. The Board found that the perjury was not complete in *Matter of R-R-*, 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. As it appears that the applicant in this case was taken from his place of employment to the ICE office and questioned for over an hour by Puerto Rican agents, who did not believe he was from Puerto Rico, he cannot be said to have been acting voluntarily prior to the agents' awareness of his false claim to U.S. citizenship. For the same reasons, this case is distinguished from *Matter of M-*, 9 I&N Dec. 118 (BIA 1960), also cited by counsel, in that the applicant in that case voluntarily retracted his own statement before it was complete and before the official became aware of the fraudulent nature of his statements. The Field Office Director's determination of inadmissibility is

therefore affirmed. Therefore, as a result of his false claim to U.S. citizenship, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act.²

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. As the applicant's false claim to U.S. citizenship occurred after September 30, 1996, the applicant is not eligible for a waiver under section 212(a)(6)(C)(iii) of the Act. Additionally, the applicant does not meet any of the exceptions under section 212(a)(6)(C)(ii)(II), as the record reflects that neither of the applicant's parents are U.S. citizens, he did not permanently reside in the United States prior to attaining the age of 16, and he knew he was a citizen of Ecuador at the time of his misrepresentation. See *Form I-213, Record of Deportable/Inadmissible Alien*, dated February 4, 2009.

The AAO finds that because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his qualifying relative or whether he merits the waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. See 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.

² The AAO will not address whether the applicant also is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, because his inadmissibility under section 212(a)(6)(C)(ii) renders him ineligible to apply for a waiver.