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



U.S. Citizenship
and Immigration
Services



H6

DATE: JAN 09 2012 OFFICE: CIUDAD JUAREZ

FILE:

IN RE:

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

ON BEHALF OF APPLICANT:



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 \$630. 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,

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Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who entered the United States without admission or parole in April 2003. The applicant was served with a Notice to Appear on September 29, 2004, based upon his entry to the United States without admission or parole. The applicant was granted voluntary departure by an immigration judge on July 28, 2005, with the applicant ordered to depart the United States on or before September 26, 2005. The applicant departed the United States on September 26, 2005. The applicant accrued unlawful presence in the United States from April 2003 until he was granted voluntary departure on July 28, 2005.¹ The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 is a beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for the applicant's spouse and that the applicant is also subject to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for making a false claim to U.S. citizenship, and denied the application accordingly. *See Decision of the Field Office Director*, dated September 15, 2009.

On appeal, counsel for the applicant asserts that the applicant never claimed to be a U.S. citizen and did not use fraudulent documents to gain employment. Counsel states that if the applicant had made a false claim to U.S. citizenship, that allegation would have appeared on his Notice to Appear and the applicant would not have been released on his own recognizance in court. Counsel further contends that the applicant's spouse is experiencing medical and financial hardship due to her husband's inadmissibility.

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

(C) Misrepresentation. –

.....

(ii) Falsely Claiming Citizenship

¹ For aliens granted voluntary departure pursuant to section 240B of the Act, the period of time between the granting of voluntary departure and the date for their departure, if the alien departs according to the terms of the grant of voluntary departure, is a period of stay authorized by the Secretary of Homeland Security for purposes of determining inadmissibility under section 212(a)(9)(B)(i) of the Act. *See Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate; Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate; Pearl Chang, Acting Chief, Office of Policy and Strategy, dated May 6, 2009.*

- (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.

The record reflects that on September 29, 2004, the applicant was encountered by border patrol agents as he was traveling to his place of employment in Midland, Texas. *See Form I-213*, dated September 29, 2004. When questioned about his citizenship status, the applicant stated that he was a U.S. citizen through birth in Midland, Texas. After further questioning, the applicant admitted Mexican citizenship and illegal status in the United States. *Id.*

The applicant seeks a waiver of inadmissibility based upon his accrual of unlawful presence in the United States, pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). However, the applicant is also admissible to the United States pursuant to section 212(a)(6)(C)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii)(I), for making a false claim to United States citizenship on September 29, 2004. There is no waiver available for this ground of inadmissibility. Accordingly, no purpose would be served in discussing whether the applicant has established that denial of the waiver would result in extreme hardship to a qualifying relative or whether the applicant merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.