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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**

H6

Date: **JUN 08 2012** Office: PORTLAND, OREGON

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and 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 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 with the field office or service center that originally decided your case by filing a 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,

Perry Khew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Portland, Oregon, 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 Mexico 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 attempting to procure admission to the United States by 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 and seeking readmission within ten years of his last departure from the United States.¹ The applicant is married to a U.S. citizen and the father of two U.S. citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and 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 spouse and children.²

The Field Office Director determined that the applicant does not qualify for the exception to the inadmissibility under section 212(a)(6)(C)(ii) of the Act, and that he had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative. The Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 11, 2009.

On appeal, the applicant, through counsel, contends that the applicant made a timely retraction of his false claim to U.S. citizenship. *Appeal Brief*, dated April 15, 2009. Additionally, counsel claims that the applicant was a class member of *Duran Gonzales*, and since it has been more than five years since the applicant was removed, he is no longer inadmissible under section 212(a)(9)(C)(i)(II) of the Act. *Id.* Counsel also states that the applicant submitted significant evidence demonstrating that his wife and son will experience extreme hardship if the applicant's waiver is denied. *Id.*

The record includes, but is not limited to, counsel's appeal brief and brief in support of the Form I-601, statements from the applicant and his wife, letters of support, school records for the applicant's children, employment documents, medical documents for the applicant and his son, financial documents, photos, 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)(6)(C) of the Act provides, in pertinent part:

¹ The AAO notes that the applicant may also 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.

² The AAO notes that on or about January 6, 2006, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The Director, Missouri Service Center, denied the Form I-212 on June 21, 2007, and no appeal was filed.

(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.

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

Section 212(i) of the Act provides:

(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 case, the record indicates that on January 21, 1999, the applicant attempted to enter the United States by presenting a California birth certificate in someone else's name. On January 22, 1999, the applicant was ordered removed from the United States. *See Form I-860, Notice and Order of Expedited Removal*, dated January 22, 1999. He was removed on the same day. On February 1, 1999, the applicant entered the United States without inspection. *See Form I-485, Application to Register Permanent Residence or Adjust Status*, filed July 31, 2007.

In addressing counsel's claim that the applicant made a timely retraction of his claim to U.S. citizenship, the AAO finds that the record fails to support counsel's claim. The AAO acknowledges that a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground of ineligibility. 9 FAM 40.63 N4.6. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.* In the present case, the applicant did not admit to his Mexican citizenship until he was in secondary inspection. See *Form I-213, Record of Deportable/Inadmissible Alien*, dated January 22, 1999. As the applicant did not retract his misrepresentation during his primary inspection, his first opportunity to do so, his retraction was not timely. Additionally, the AAO finds that the applicant's use of a California birth certificate in someone else's name "to try and pass" into the United States is sufficient to establish his inadmissibility under section 212(a)(6)(C) of the Act.

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), are ineligible for waiver consideration. 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 clearly inadmissible to the United States and is not eligible for a waiver under section 212(a)(6)(C)(iii) of the Act. The AAO also finds that the applicant is ineligible for the exception to the inadmissibility grounds under section 212(a)(6)(C)(ii)(II) of the Act.

Further, the AAO finds the applicant inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act for having been removed from the United States on January 22, 1999, and subsequently entering the United States without inspection. To avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States *and* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred on January 22, 1999. The applicant has been residing in the United States since February 1999, and therefore has not remained outside the United States for 10 years since his last departure. The record reflects that the applicant is currently statutorily ineligible to apply for permission to reapply for admission. Additionally, the applicant's Form I-212 was denied on June 21, 2007.

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 U.S. citizen spouse or whether he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) 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.