

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



U.S. Citizenship  
and Immigration  
Services



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DATE: NOV 23 2012 OFFICE: CIUDAD JUAREZ

FILE:



IN RE: APPLICANT:



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

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 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Acting 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 was found to have presented a United States birth certificate for an identification card. He was found to be inadmissible to the United States under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(ii), for having made a false claim of U.S. citizenship for a purpose or benefit under Federal or State law. He was additionally found to be inadmissible to the United States under 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 10 years of his last departure from the United States. The applicant is moreover inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) because he was removed from the United States on July 18, 2007.<sup>1</sup> The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant was inadmissible under section 212(a)(6)(C)(ii) of the Act, and that there was no waiver of this inadmissibility. *See Decision of Field Office Director* dated November 15, 2010. The application was accordingly denied. *Id.*

On appeal, counsel contends that there is no evidence the applicant obtained a Kansas identification card or a social security card by presenting a U.S. birth certificate in the name of [REDACTED] and that there is also no evidence the applicant attempted to obtain a Nebraska identification card in July 2006 by presenting that birth certificate.

The record includes, but is not limited to, statements from the applicant and his spouse, evidence of birth, marriage, residence, and citizenship, documentation of criminal and immigration proceedings, medical and educational records, letters from family, friends, and community members, articles on country conditions in Mexico as well as medical conditions, other applications and petitions, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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

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<sup>1</sup> The AAO notes that the applicant has a 2007 Nebraska conviction for forgery of a motor vehicle title. The Field Office Director did not address whether or not this conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. This inadmissibility will not be addressed given the applicant's inadmissibility under section 212(a)(6)(C)(ii) of the Act.

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.

....

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

Section 212(i) of the Act provides:

- (ii) 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 alien 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.

The applicant admitted that he entered the United States without inspection in January 2000, and the record reflects that he was removed to Mexico on July 18, 2007. The record indicates that the applicant used the identity of [REDACTED] including a counterfeit identification card from the state of Utah and social security card, to obtain employment in Nebraska 2005. Documentation in the record further reflects that in July 2006, a person attempted to obtain a Nebraska identification card from the Nebraska Department of Motor Vehicles (DMV) by presenting a U.S. birth certificate in the name [REDACTED] as well as the aforementioned social security card. The record further demonstrates that on November 29, 2006, when he was apprehended in connection with a criminal investigation, he was found to be in possession of a U.S. birth certificate in the name [REDACTED] as well as a counterfeit Kansas identification card with a social security number identical to the number issued in the name

██████████ Counsel asserts there is no evidence showing the applicant was the individual who attempted to obtain that Nebraska identification card.<sup>2</sup>

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

In the present case, the applicant has failed to meet his burden of proof to show that he did not present a U.S. birth certificate in the name ██████████ in an attempt to obtain an identification card from the state of Nebraska. The record reflects that the applicant used the same name, date of birth, and social security number to procure employment in Nebraska the year before, and that he possessed the birth certificate approximately five months after the attempt at the Nebraska DMV. The applicant fails to explain how he came to possess the birth certificate or how the social security number issued in the name ██████████ which he used to obtain employment in 2005, and which was noted on the counterfeit Kansas identification card in his possession in November 2006, came to be used by anyone else in the attempt to obtain a Nebraska identification card in July 2006,

Given the evidence of record, the AAO affirms that the applicant is inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. 1182(a)(6)(C)(ii), for having made a false claim of U.S. citizenship in order to procure a benefit under state law. There is no waiver available for this ground of inadmissibility.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established eligibility for a waiver under section 212(a)(9)(B)(i)(II) of the Act or whether he would merit the waiver as a matter of discretion.

In proceedings for a waiver of grounds of inadmissibility, 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> It is additionally noted that because the Kansas identification card was determined to be counterfeit, the applicant did represent himself to be a U.S. citizen to a federal or state agency for purposes of obtaining the Kansas identification card.