



U.S. Citizenship
and Immigration
Services

H6

[REDACTED]

Date: **OCT 10 2012**

Office: LIMA, PERU

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and 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:

[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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Peru who was found to be inadmissible to the United States under 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 a period of one year or more and under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

In her decision, dated April 25, 2011, the field office director found that the applicant had failed to establish extreme hardship to his qualifying relative as a result of his inadmissibility. She also found that even if the applicant had established extreme hardship, his case did not warrant the favorable exercise of discretion because of his convictions for assaulting a federal officer and for falsely claiming to be a U.S. citizen to gain an employment benefit.

The AAO notes that the field office director states that the applicant was convicted, under 18 U.S.C. 911 for falsely claiming to be a U.S. citizen. However, the record indicates that although he was charged with this offense, the charge was dismissed and the applicant was not convicted.

On appeal, counsel states that the applicant's spouse is and will continue to experience extreme hardship as a result of the applicant's inadmissibility. He submits additional evidence on appeal.

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

- (i) 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.

On September 23, 2003, February 18, 2004, and June 22, 2004 the applicant claimed to be a U.S. citizen on an I-9 Form, Employment Eligibility Verification Form, for the purposes of obtaining employment. The record indicates that on September 1, 2006 the applicant was ordered removed from the United States pursuant to sections 237(a)(1)(B), (a)(1)(C)(i), (a)(3)(D), and (a)(2)(A)(i) of the Act. Section 237(a)(3)(D) of the Act states that an applicant who falsely represents himself to be

a U.S. citizen for any purpose or benefit under this Act or a Federal or State law is subject to removal.

Applicants 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) of 1996, are inadmissible under section 212(a)(6)(C)(ii)(I) of the Act and are ineligible for waiver consideration. No waiver is available for a violation of section 212(a)(6)(C)(ii)(I) and the record fails to demonstrate that the applicant qualifies for the exception described in section 212(a)(6)(C)(ii)(II). As the applicant's inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act statutorily bars her admission to the United States, the AAO finds no purpose would be served in considering whether she might be able to establish eligibility for a waiver of her inadmissibility under sections 212(a)(9)(B)(i)(II) or 212(a)(2)(A)(i)(I) of the Act.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Immigration and Nationality 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.