

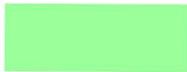
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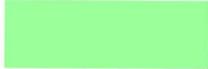


U.S. Citizenship
and Immigration
Services



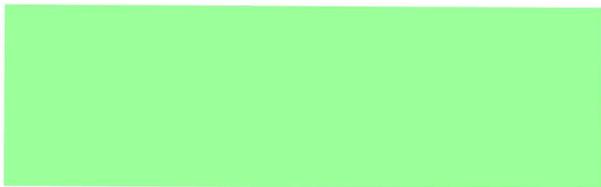
DATE: FEB 04 2013 Office: VIENNA, AUSTRIA

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 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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Romania who 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 and seeking admission for ten years from his last departure from the United States. He was also found inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) for having a voluntary departure order converted into an order of removal in 1995, after not departing the United States, and for being expeditiously removed from the United States in 2000. He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with his U.S. citizen spouse. He also is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for attempting to procure admission by falsely claiming U.S. citizenship.

The Field Office Director found that the applicant was ineligible for a waiver under section 212(a)(9)(C) of the Act, for having accrued over a year of unlawful presence in the United States, having an order of removal entered against him, and subsequently re-entering without being admitted. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of Field Office Director*, dated February 6, 2012. The Field Office Director, in a separate decision on the same date, also denied the applicant's Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212).¹

On appeal, the applicant's attorney asserts that the applicant did not falsely claim to be a U.S. citizen. Further, the applicant's attorney states that the applicant was inspected at the U.S.-Mexico border, as he presented himself for questioning.

The record includes but is not limited to a Form I-601; two Forms I-212; a Form I-290B, Notice of Appeal or Motion; briefs written on behalf of the applicant; relationship and identification documents for the applicant, qualifying spouse and other family members; financial documentation; photographs; letters and statements from the qualifying spouse, the applicant, his friend and other reference letters regarding the applicant; a psychological evaluation; country-conditions materials; and an Application for Immigrant Visa and Alien Registration (Form DS-230) with accompanying evidence. 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, that:

¹ The applicant previously had filed a Form I-212 with the Chicago Field Office; that application was denied on May 18, 2009, because of the applicant's ineligibility for a waiver under section 212(a)(9)(C) of the Act. In the instant appeal, we are only considering the applicant's Form I-601, as a Notice of Appeal or Motion (Form I-290B) was not submitted for the Form I-212 denied in February 2012.

- (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).

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 would not be eligible for a waiver under section 212(a)(6)(C)(iii).

The applicant's attorney asserts that the applicant did not falsely claim to be a U.S. citizen. The applicant's attorney states that the applicant's friend, who was driving the vehicle in which the applicant was a passenger, answered affirmatively when the U.S. inspector asked if they were U.S. citizens. The record also contains affidavits from the applicant and his friend attesting to the same facts. However, the record contains a sworn statement taken from the applicant on September 25, 2000, at Lukeville, Arizona, in which the applicant states he told the U.S. inspector "that we were all citizens of the United States." The applicant also affirmatively answered that he knew that it is illegal to try to enter the United States by claiming to be a citizen of the United States. See *Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867AB)*, dated September 25, 2000. In addition, the record indicates that the applicant, when asked by the U.S. inspector how he became a U.S. citizen, stated that he did not know but that he had been in the United States since he was four years old. See *Record of Deportable/Inadmissible Alien (Form I-213)*, dated September 25, 2000. The sworn statements made by the applicant on September 25, 2000 directly contradict the assertions made on appeal by the applicant's attorney and his friend, as well as his own statements. Going on record without supporting documentary evidence is not

sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). As such, the evidence provided in support of the assertions relating to the applicant's admissibility was insufficient.

Further, the applicant does not meet any of the exceptions under 212(a)(6)(C)(ii)(II), as the record reflects that the applicant did not permanently reside in the United States prior to attaining the age of 16 and that the applicant knew he was a citizen of Romania when he claimed to be a U.S. citizen. *See Record of Deportable/Inadmissible Alien (Form I-213)*, dated September 25, 2000. As such, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.