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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 02 2014 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center, 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 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 one year or more and seeking readmission within 10 years of her last departure from the United States, and 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. The applicant's spouse and children are U.S. citizens. The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The Director found that because there is no waiver for inadmissibility under section 212(a)(6)(C)(ii) of the Act, the applicant would remain inadmissible even if a waiver were granted for her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), was denied as a matter of discretion. *Decision of the Director*, dated July 3, 2013.

On appeal, counsel asserts that the Director erroneously found that the applicant entered the United States by making a false claim of U.S. citizenship and the Director failed to comply with U.S. Citizenship and Immigration Services (USCIS) policy because he did not discuss the evidence addressing the inadmissibility finding. *Form I-290B, Notice of Appeal or Motion (Form I-290B)*, filed July 19, 2013.

The record includes, but is not limited to, counsel's brief, statements from the applicant's spouse, photographs and statements in support of the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .

> (v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant stated under oath before a U.S. consular officer that she entered the United States at the port of entry in October 2000 by claiming to be a U.S. citizen. The record also reflects that she departed the United States in October 2010. There is no evidence that she applied for lawful immigrant or non-immigrant status during this period; therefore the applicant accrued unlawful presence during this time in the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of her October 2010 departure from the United States. The applicant does not contest her inadmissibility under this section of the Act.

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

> (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.

The applicant also was found inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act for making a false claim to U.S. citizenship when she entered the United States in October 2000. The applicant contests this inadmissibility finding by asserting, through counsel, that she never claimed to be a U.S. citizen; she entered the United States without inspection in October 2000. Counsel states that the applicant appeared at the U.S. consulate in Ciudad Juarez on October 8, 2010 for an interview; no independent recording or official transcript of the consular interview exists; she was not permitted to bring witnesses or an attorney to that interview; and the applicant did not sign statements related to the accusations made against her.

Counsel also states that the consular officer failed to ask the applicant whether she presented documents to the U.S. immigration officer at a port of entry; whether anyone was with her; whether the officer spoke to her in English or Spanish; whether she was able to speak English then; whether she entered at a port of entry or was encountered trying to evade inspection; whether anyone spoke on her behalf; and any other questions that might have clarified the circumstances surrounding her entry. Counsel adds that the consulate gave a vague response to her questions about the inadmissibility finding without providing any examples of the testimony they relied on to support their conclusion.

Counsel cites *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010) in asserting that a false claim to U.S. citizenship does not take place where the border official believes the alien to be a U.S. citizen but the alien does not make such a claim. In *Matter of Quilantan*, the alien was a passenger in a car driven by her friend; the immigration inspector asked her friend whether he was a U.S. citizen but did not ask the alien anything; and the immigration inspector then waved the car through. *Matter of Quilantan,* at 286. The Board of Immigration Appeals found that the alien had been inspected and admitted. *Id.* at 293. Counsel also cites to *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980). In *Matter of Areguillin,* the alien claimed that she did not volunteer any information and was not asked questions by immigration authorities when seeking admission with several others in a car. *Matter of Areguillin*, at 309. The facts of this case, based on the record presently before the AAO, are distinguishable from the cited cases. The record indicates that in 2010 the applicant explained to a U.S. consular officer that she had claimed that she was a U.S. citizen when seeking admission in October 2000; the applicant later claimed that she did not tell the consular officer that she pretended to be a U.S. citizen when she entered the United States. The cited cases do not involve actual representations of legal status before an immigration officer and do not resolve the applicant's inconsistencies as reflected in the record.

Counsel avers that at her second immigrant-visa interview in September 2012, the applicant told the consular officer that she did not enter the United States through a line at the border; rather, she entered the United States near a bridge close to a port of entry with the help of a coyote. Counsel posits that this is consistent with the applicant's October 8, 2010 testimony. She asserts that three days after her first consular interview, on October 11, 2010, the applicant was asked by counsel to write down exactly what transpired between the consular officer and her. According to the applicant, the consular officer had asked her, "What did you say when you got across?" and her response was, "Nothing they didn't ask me for anything they said go ahead." Counsel states that considering the applicant's poor grasp of the English language and the vague wording of the question, it is possible that she was referring to a coyote and not a U.S. border official when she used the word "they" in her response. Counsel adds that on October 29, 2010, the applicant submitted to a computer voice stress analysis, and the test showed no deception when she responded to questions regarding the consular interview and claim of citizenship upon entry to the United States.

Counsel asserts that it is unreasonable to conclude that the applicant made a false claim to citizenship considering the totality of the circumstances: The applicant does not speak English well even after living in the United States for ten years; she spoke Spanish in her consular interviews; and

a U.S. border official would not have believed her to be a U.S. citizen even if she had spoken with one.

The record does not include the 2010, statement of the applicant that counsel references or the computer voice stress analysis. The record does not include other statements from the applicant or other evidence that would support concluding that the consular officer's finding was incorrect. The burden of proof in these proceedings is on the applicant. The AAO notes that without documentary evidence to support these claims, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also claims that the applicant's right to due process of law was violated by the consular officer. Neither consular nor constitutional issues are within the appellate jurisdiction of the AAO; therefore the due process claim will not be addressed in the present decision.

There is no waiver for this ground of inadmissibility and the exception in section 212(a)(6)(C)(ii)(II) of the Act does not apply to the applicant. As the applicant is statutorily inadmissible to the United States, no purpose would be served in discussing whether the applicant has established extreme hardship to her U.S. citizen spouse or whether she merits a waiver as a matter of discretion.

In application proceedings it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.