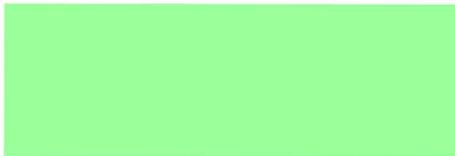




U.S. Citizenship
and Immigration
Services

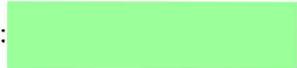
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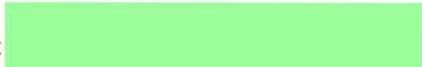
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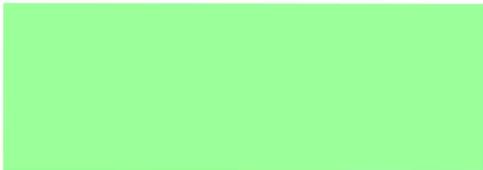


IN RE: Applicant:



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. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision will be affirmed.

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, was denied as a matter of discretion. *Decision of the Director*, dated July 3, 2013. We found that, based on the record, the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act; the exception in section 212(a)(6)(C)(ii)(II) of the Act does not apply to her; and that as a result, no purpose would be served in addressing extreme hardship to her spouse and whether she merits a waiver as a matter of discretion. *Decision of the AAO*, dated January 2, 2014. The appeal was dismissed accordingly.

On motion, counsel asserts that the record as it existed during the applicant's appeal should have included evidence that she had submitted to the U.S. consulate in Ciudad Juarez in January 2011 and that it was a violation of U.S. Citizenship and Immigration Services (USCIS) policy not to issue a Request for Evidence (RFE) of documentation of the applicant's manner of entry. *Form I-290B, Notice of Appeal or Motion*, filed January 29, 2014.

The record includes, but is not limited to, counsel's brief, statements from the applicant's spouse, photographs, a computer voice-stress analysis for the applicant, and statements in support of the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant has filed a motion to reconsider. A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Based on the reasons stated, namely counsel's assertion that this office incorrectly applied USCIS policy, the requirements of a motion to reconsider have been met.

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-

....

(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 Laredo, Texas 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; and 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 a 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, whether she entered at a port of entry or was encountered trying to evade inspection, whether anyone else 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 examples of the testimony they relied on to support their conclusion.

Counsel asserts 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 an inspection 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 and submits a transcript of this consular testimony that she and the applicant prepared on October 11, 2010, three days after the consular interview. Counsel had asked the applicant to describe exactly what transpired during the consular interview, which the applicant did in question-and-answer format. 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 the applicant 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 no deception was indicated when she responded to questions about the consular interview and claiming U.S. citizenship upon her entry into the United States.

Counsel asserts that it is unreasonable to conclude that the applicant made a false claim to U.S. 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; a U.S. border official would not have believed her to be a U.S. citizen if she had spoken with one; and nothing in the record indicates that she presented proof of U.S. citizenship at a port of entry.

The documents that counsel claims she submitted to the U.S. consulate in January 2011 were not in the record at the time of our January 2, 2014 decision. However, counsel submits these documents, which include the applicant's summary of her 2010 consular interview and questions asked during her computer voice-stress analysis test, with this motion. Therefore the issue of issuing an RFE is moot and the new evidence will be considered with this motion.

The applicant was asked by her voice analysis examiner if she ever told any U.S. immigration authority that she is or was a U.S. citizen; if she, during her consular interview, admitted to previously claiming to be a U.S. citizen; if she had ever made a claim to U.S. citizenship for any purpose or

benefit under state or federal law; if anyone else had made a claim to U.S. citizenship on her behalf; if she presented a U.S. driver's license, birth certificate or passport when entering the United States; and if she spoke English when she entered the United States. The applicant answered in the negative to all of these questions and the voice stress analysis reflects that no deception was indicated. The examiner/instructor who signed the submitted document concludes that in her opinion, based on her training and experience, the applicant responded truthfully to the relevant questions.

Consular case notes from the applicant's October 10, 2010 interview reflect that the applicant stated under oath that she claimed that she was a U.S. citizen at the Laredo port of entry in October 2000. Consular case notes from the applicant's September 4, 2012 interview reflect that the applicant claimed that she entered the United States near Laredo by paying a coyote and that she entered with eight other people.

Though counsel provides a January 2011 printout of an Internet page describing voice stress technology from the website www. she submits no evidence of scientific and legal support for the use of this technology to determine an individual's credibility. Because the record does not include sufficient evidence to establish the reliability of the computer voice-stress analysis, it is given minimal weight. The applicant's statement does not outweigh the consular notes in the record, which reflect that she made a false claim to U.S. citizenship in October 2010. Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act.

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 she 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 motion is granted and the prior AAO decision is affirmed.