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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **APR 22 2008**  
[consolidated therein]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after  
Deportation or Removal under Section 212(a)(9)(A) of the Immigration and  
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Director, California 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 attempted to enter the United States on June 5, 2000, by falsely claiming United States citizenship. On the same day, the applicant was expeditiously removed from the United States. At some point, the applicant reentered the United States without inspection. On December 3, 2005, the applicant married [REDACTED] a United States citizen, in California. On May 22, 2006, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On August 28, 2006, the Form I-130 was approved. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), and 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii). She now seeks permission to reapply for admission into the United States, in order to reside with her United States citizen husband.

The director determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for falsely claiming United States citizenship, and there is no waiver available. *Director's Decision*, dated February 7, 2007. The director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Id.*

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

Section 212(a)(6). Illegal entrants and immigration violators.-

(A) Aliens present without admission or parole.-

(i) In general.- An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General [now, Secretary, Department of Homeland Security], is inadmissible.

....

(C) Misrepresentation.-

(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.

The AAO notes that aliens making false claims to United States 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 United States citizenship occurred after September 30, 1996, the applicant is clearly inadmissible to the United States and not eligible for a waiver under section 212(a)(6)(C)(ii) of the Act. Additionally, the applicant is inadmissible under section 212(a)(6)(A)(i) of the Act and section 212(a)(9)(A)(ii) of the Act, for being present without admission or parole and for being ordered removed.

On appeal, the applicant, through counsel, asserts that “[t]he alleged ‘oral’ false claim to United States citizenship (U.S.C.) has never been validated or upheld by an immigration judge, or any forum in which [the applicant] could contest this finding. Since the consequences for a false claim to U.S.C. is so draconian, [the applicant] has a due process right to contest that finding.” *Attachment to Form I-290B*, filed March 2, 2007. The AAO notes that the applicant presented a California birth certificate, a counterfeit social security card, and a California identification card in someone else's name in order to gain entry into the United States, and copies of these documents are contained in the record. During secondary inspection, the applicant admitted to her true name and nationality. *Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated June 5, 2000. In the same statement, the applicant admitted to knowing it was illegal to present a document not lawfully issued to her to enter the United States. *Id.* Counsel claims that the applicant initially “entered the United States without inspection at San Ysidro, California in 1988, at the age of 14 years.... She has never been arrested, nor has she ever received welfare in the United States.... [The applicant] is a cancer survivor, who must be treated for at least the next five years to guard against a return of her cancer. Should she be prevented from returning to the United States, the hardship accruing to her United States citizen husband is significant, in that [the applicant] faces a return of her cancer without her treatment.” *Appeal Brief*, filed May 7, 2007. The AAO notes that the applicant submitted documentation that she has a history of right breast cancer, and on July 21, 2005, she had a right breast implant and a left breast mastopexy for symmetry. *See transcribed report from* [REDACTED], dated July 21, 2005.

Counsel asserts that the “Director misspeaks when she asserts the charge of inadmissibility based on a false claim to United States citizenship does not provide a waiver. In fact, it does. That waiver is found at INA Section 212(a)(6)(C)(ii)(II)...In the instant case, [the applicant] was brought to the United States, where her natural father lived, at the age of approximately 14 years. She has continuously lived in the United States since that time, except for one brief, casual and innocent exit to visit her mother in 2000. Further, [the applicant’s] stepmother is a United States citizen. Currently, [the applicant] is also married to a United States citizen, whose petition for applicant was approved on May 10, 2006.” *Appeal Brief*, filed May 7, 2007.

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

(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 representations 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.

First, the AAO notes that section 212(a)(6)(C)(ii)(II) of the Act explains that there is an *exception* to the section 212(a)(6)(C)(ii) ground of inadmissibility, not a waiver. Second, the AAO notes that neither of the applicant’s parents are United States citizens, and she has not established that she was adopted by her United States citizen stepmother. And, finally, even though the applicant was 14 years of age when she entered the United States, she has not established that she reasonably believed that she was a United States citizen. In fact, during secondary inspection questioning, the applicant admitted to her true name and Mexican nationality and citizenship.

*Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act. No waiver is available to an alien who has made a false claim to United States citizenship; therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the director.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. After a careful review of the record, it is concluded that the

applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.