

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

#4

[REDACTED]

Date: **AUG 23 2011**

Office: [REDACTED]

FILE: [REDACTED]

IN RE: [REDACTED]

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

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 Field Office Director, [REDACTED] denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the [REDACTED] who, on November 25, 2000, appeared at the [REDACTED] port of entry. The applicant made an oral false claim to U.S. citizenship. The applicant was placed into secondary inspection. The applicant made a second oral false claim to U.S. citizenship. After further questioning, the applicant admitted that he had attempted to enter the United States by claiming to be a U.S. citizen. The applicant admitted that he was not a U.S. citizen and that he did not have valid documentation to enter the United States. The applicant admitted that he had been previously admitted to the United States as an L-1 nonimmigrant and that he had left his documentation in [REDACTED]. The applicant admitted that he was aware that it was illegal for him to attempt to enter the United States by making the claim to U.S. citizenship. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for making a false claim to U.S. citizenship. On November 27, 2000, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).

On June 30, 2008, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a pending Immigrant Petition for Alien Worker (Form I-140) filed on his behalf by [REDACTED]. On the same day, the applicant filed the Form I-212. The Form I-485 indicates that the applicant last entered the United States on April 25, 2008 as an H-1B nonimmigrant. On July 8, 2010, the Form I-140 was approved. On November 1, 2010, the Form I-485 was denied. On April 18, 2011, the applicant filed a second Form I-485 based on the approved Form I-140, indicating that he last entered the United States with advance parole on September 29, 2010. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i). 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 remain in the United States and become a lawful permanent resident.

The field office director determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act and that no waiver is available. The field office director denied the Form I-212 accordingly. *See Field Office Director's Decision*, dated November 1, 2010.

On appeal, counsel contends that the denial of the Form I-212 was legally insufficient; there is an affirmative defense to the determination of inadmissibility made against the applicant; and the denial is based on an incorrect assertion that the applicant was convicted of an aggravated felony.¹ *See Counsel's Brief*, dated December 22, 2010. In support of her contentions, counsel submits the referenced brief, copies of the adjudicator's field manual and copies of

¹ The AAO concurs that the field office director incorrectly stated that the applicant has been convicted of an aggravated felony; however, as discussed below, the AAO concurs with the field office director's finding that the applicant is otherwise mandatorily inadmissible.

documentation already in the record. The entire record was reviewed in rendering a decision in this case.

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

(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 . . . is inadmissible.

ii. Exception-

In the case of an alien making a representation described in subclause (I), if each natural parents 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 appeal, counsel contends that the applicant reiterates and continues to assert that he never affirmatively made a false claim to U.S. citizenship or made such a claim for the purpose of obtaining benefits under the Act. Counsel contends that the applicant only made a "half-nod" to inspectors at the port of entry, which the inspectors incorrectly interpreted as a claim to U.S. citizenship. Counsel contends that the preponderance of the evidence, which includes statements from the applicant and his friend asserting that the applicant never affirmatively made a false claim to U.S. citizenship, establishes that the applicant did not make a false claim to U.S. citizenship or, in the alternative, made a timely retraction of such a claim at the first available opportunity. The AAO notes that the case law to which counsel cites either does not arise in the Fifth Circuit Court of Appeals (Fifth Circuit) and therefore, does not apply to this case, or only refers to inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), in regard to willful misrepresentation.

The record establishes that the applicant knew he was making a false claim to U.S. citizenship in order to attempt to enter the United States and made an affirmative claim to U.S. citizenship to two separate immigration officers prior to admitting that he was not a U.S. citizen. The record also establishes that the applicant admitted to a third immigration officer that he had affirmatively made a false claim to U.S. citizenship. The AAO notes that the applicant was

served with documentation informing him that he was being removed from the United States on November 27, 2000, including his statement in regard to his attempt to enter the United States.

Counsel also contends that the applicant timely retracted any false claim to U.S. citizenship that he may have made and that the claim does not render him inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. A timely retraction has been found only in cases where applicants used fraudulent documents *en route* and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. *See, e.g., Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel*, 18 I&N 33 (BIA 1984). Counsel contends that the applicant made a timely retraction of his claim to U.S. citizenship and refers to the guidance set forth by the State Department in its 9 Foreign Affairs Manual (FAM) Sec. 40.63 Note 4.6, which indicates that a timely retraction would serve to purge a misrepresentation. The AAO notes that 9 FAM Sec. 40.63 Note 4.6, as cited by counsel, relates to misrepresentations under section 212(a)(6)(C)(i) of the Act, not false claims to U.S. citizenship under section 212(a)(6)(C)(ii) of the Act, the section under which the applicant is inadmissible. The guidance relating to section 212(a)(6)(C)(ii) of the Act, found in 9 FAM Sec. 40.63 Note 11, makes no reference to timely retractions, only that a false claim to U.S. citizenship must have been properly categorized.

Counsel contends that the applicant made a timely retraction of his claim to U.S. citizenship and refers to the guidance set forth in the Adjudicator's Field Manual in chapter 40.6(c). For the doctrine of timely retraction to apply, an alien must correct his or her testimony voluntarily prior to being exposed by the government official. Admitting to the false claim of U.S. citizenship *after* an immigration officer has challenged the veracity of the claim is not a timely retraction. In the instant case, the applicant made the false claim to U.S. citizenship to two separate immigration officers and further statements to support his claim to U.S. citizenship even after he had been placed into secondary inspection. The applicant retracted his claim to be a U.S. citizen only after having been placed into secondary inspection and having the veracity of his claim to U.S. citizenship questioned by immigration officials. Moreover, the record reflects that the applicant was aware that, as a nonimmigrant, he was required to present documentation in order to gain entry into the United States and that he did not present any documentation to immigration officers at the port of entry.

As of September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208, aliens making false claims to U.S. citizenship are statutorily ineligible for a waiver of inadmissibility. *See* sections 212(a)(6)(C)(ii) and (iii) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(ii) and 1182 (a)(6)(C)(iii). Therefore, if an alien makes a false claim to U.S. citizenship on or after September 30, 1996, the alien is subject to a permanent ground of inadmissibility.

The AAO finds that the applicant, by making oral false claims to U.S. citizenship on November 25, 2000, is inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act. The AAO also finds that the applicant is ineligible for the exception to the inadmissibility grounds under section 212(a)(6)(C)(ii)(II) of the Act.

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 inadmissible under the provisions of section 212(a)(6)(C)(ii) of the Act and no waiver is available. Therefore, no purpose would be served 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 appeal will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed. The application remains denied.