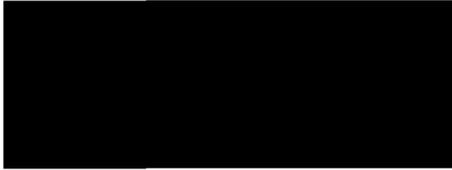


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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



PUBLIC COPY



H4

DATE: **MAR 12 2012**

Office: MEXICO CITY (CIUDAD JUAREZ)

File: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), and Application for Permission to Reapply for Admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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 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,


for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application and application for permission to reapply for admission were denied by the Field Office Director, Mexico City, Mexico, and are 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 using fraudulent documents on October 2, 1996, and was apprehended and deported on October 8, 1996. She reentered the United States without inspection or parole in January 1997, and remained in this country until being detained for lack of lawful status. Her prior removal order was reinstated, and she voluntarily departed in March 2004. She was found to be inadmissible to the United States under section 212(a)(9)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(i), and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). She was also found inadmissible under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for reentry without inspection after deportation. The applicant is seeking a waiver of inadmissibility and permission to reapply for admission in order to reside in the United States with her lawfully resident husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), as well as the Application for Permission to Reapply for Admission to the United States after Deportation or Removal (Form I-212). *Decision of Field Office Director*, dated July 21, 2009.

On appeal, while the applicant does not contest the first two inadmissibility grounds, her counsel contends that the denial decision erred in overlooking the extreme hardships that the applicant's husband will suffer as a result of the applicant's inadmissibility and, in denying permission to reapply, that it erroneously applied section 212(a)(9)(C)(i) of the Act. Counsel contends that the permanent bar of section 212(a)(9)(C) does not apply in this case due to the fact that applicant's removal and unlawful U.S. entry occurred prior to April 1, 1997.

In support of the appeal, counsel submits a legal brief and a USCIS Interoffice Memorandum dated May 6, 2009. The record also contains documentation submitted in support of the original waiver request and request for permission to reapply for admission. The entire record was reviewed and considered in rendering this decision.

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

Misrepresentation

(i) In General - 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.

(iii) Waiver Authorized

For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

Admission of Immigrant Inadmissible for Fraud or Willful Misrepresentation of Material Fact

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien [...].

By USCIS policy, section 212(a)(9)(C)(i)(II) of the Act applies only to unlawful reentry on or after the April 1, 1997 *effective date* of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA):

Section 212(a)(9)(C)(i)(II) of the Act renders inadmissible those aliens who have been ordered removed under sections 235(b)(1) or 240 of the Act, or any other provision of law, and who enter or attempt to reenter the United States without being admitted. These aliens are permanently inadmissible, but may seek consent to reapply for admission from the Attorney General after they have been outside of the United States for 10 years.

Section 212(a)(9)(C)(i)(II) of the Act applies to those aliens ordered removed before or after April 1, 1997, and who enter or attempt to reenter the United States unlawfully any time on or after April 1, 1997. The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997.

INS Memorandum, "Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act (Act)," June 17, 1997.

The applicant was removed from the United States, and reentered without inspection in January 1997. Due to the applicant's removal and illegal reentry occurring before April 1, 1997, section 212(a)(9)(C)(i)(II) of the Act does not apply and, as such, the field office director erred in finding her inadmissible under this provision.

The record, however, shows the applicant remains inadmissible under section 212(a)(6)(C)(ii) of the Act based on her fraudulent use of a California birth certificate in the name of [REDACTED] as her own. The AAO notes that section 212(i) of the Act provides a waiver to aliens found inadmissible under section 212(a)(6)(C)(i), but that no waiver is available for a section 212(a)(6)(C)(ii) inadmissibility. *See* section 212(a)(6)(C)(iii). Because she made this false claim to U.S. citizenship on October 2, 1996, the applicant is inadmissible under section 212(a)(6)(C)(ii).¹

Having found the applicant statutorily ineligible for a waiver of inadmissibility, we need not discuss whether she has established extreme hardship to a qualifying relative or whether she merits a waiver as a matter of discretion.

The applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act for having sought admission to the United States on October 2, 1996 by making a false claim to U.S. citizenship. No waiver is available to an alien who falsely claims to be a U.S. citizen; therefore, no purpose would be served by the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii). *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. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the field office director.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application and application for permission to reapply are denied.

¹ Section 212(a)(6)(C)(ii) applies to false citizenship claims made on or after the September 30, 1996 *date of enactment* of IIRAIRA.