



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [REDACTED] Office: Texas Service Center

Date: OCT 3 2000

IN RE: Applicant: [REDACTED]

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

IN BEHALF OF APPLICANT: [REDACTED]

Public Copy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Ferrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. On November 30, 1998, he was ordered removed from the United States under § 235(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1225, after having been found inadmissible under § 212(a)(6)(C)(ii) of the Act, 8 U.S.C. 1182(a)(6)(C)(ii), for having falsely represented himself as a citizen of the United States. The applicant seeks permission to reapply for admission under § 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii), to support his wife and recently born child.

The director determined that no waiver was available for the ground of inadmissibility under § 212(a)(6)(C)(ii) of the Act and denied the application accordingly.

On appeal, the applicant states that he needs to be with his wife and child and to support them.

Section 212(a)(9)(A) of the Act, 8 U.S.C. 1182(a)(9)(A), CERTAIN ALIENS PREVIOUSLY REMOVED.-provides, in part, that:

(i) ARRIVING ALIENS.-Any alien who has been ordered removed under § 235(b)(1) [1225] or at the end of proceedings under § 240 [1229a] initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years 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) 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 has consented to the alien's reapplying for admission.

Section 212(a)(9)(A)(i) of the Act relates to aliens who have been removed through expedited removal proceedings (accomplished only upon a finding of inadmissibility under § 212(a)(6)(C) of the Act, fraud, or § 212(a)(7) of the Act, lack of proper documents, and upon the serving of a Form I-860, Notice and Order of Expedited Removal, upon the alien), or (if any additional grounds of inadmissibility are considered, the alien must be referred to an immigration judge pursuant to § 235(b)(2) and § 240 of the Act) following removal proceedings before an immigration judge initiated on the alien's arrival in the United States and who have actually been removed.

Section 212(a)(6)(C)(ii) of the Act provides that:

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 § 274A) or any other Federal or State law is inadmissible.

The Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). According to the reasoning in Matter of Soriano, 21 I&N Dec. 516 (BIA 1996; A.G. 1997), the provisions of any legislation modifying the Act must normally be applied to waiver applications adjudicated on or after the enactment date of that legislation, unless other instructions are provided. IIRIRA became effective on September 30, 1996 and applies to all false representation made on or after that date.

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 convicted of violating a law relating to illicit trafficking, since he is mandatorily inadmissible to the United States under present §§ 212(a)(2)(A)(i)(II) or 212(a)(2)(C) of the Act, and no purpose would be served in granting the application.

The record reflects that the applicant falsely represented himself as a citizen of the United States on November 29, 1998 by presenting a birth certificate belonging to his cousin to a Service officer at the Port of Entry in Brownsville, Texas. The applicant was served a Form I-860 on November 30, 1998 and his departure on that same date was verified on Form I-296. By making a false claim to U.S. citizenship the applicant is inadmissible under § 212(a)(6)(C)(ii) of the Act.

No waiver of a ground of inadmissibility under § 212(a)(6)(C)(ii) of the Act is available to an alien who made a false claim to United States citizenship. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating his application in this matter.

In discretionary matters, the applicant bears the full burden of proof. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957); Matter of Ducret, 15 I&N Dec. 620 (BIA 1976). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.