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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File:

Office: CIUDAD JUAREZ, MEXICO

Date:

AUG 09 2001

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)

IN BEHALF OF APPLICANT: SELF-REPRESENTED

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Ciudad Juarez, Mexico, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The applicant is a native and citizen of Mexico who was found by a consular officer to be inadmissible to the United States under § 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 a period of one year or more. The applicant is the unmarried son of a naturalized United States citizen father and is the beneficiary of an approved petition for alien relative. The applicant seeks the above waiver in order to travel to the United States to reside.

The officer in charge found the applicant inadmissible to the United States under § 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(ii), for having attempted to procure admission into the United States on July 26, 1997 by falsely claiming to be a United States citizen. The officer in charge then concluded that the applicant was statutorily ineligible to file an application for waiver of inadmissibility and denied the application.

The record reflects that the applicant was present in the United States without a lawful admission or parole from an unspecified date in 1993 until on or about April 15, 1999. When applying for an immigrant visa abroad, he was found by a consular officer to be inadmissible to the United States under § 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more, from April 1, 1997, the date the calculation for unlawful presence begins, until his departure in April 1999.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(9) ALIENS PREVIOUSLY REMOVED.-

(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 from the United States, is inadmissible.

(v) WAIVER.-The Attorney General 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 Attorney General 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record also reflects that the applicant sought to procure admission into the United States on April 16, 1999 by orally claiming to be a citizen of the United States. Upon questioning by an immigration officer, the applicant subsequently admitted that he was a native and citizen of Mexico, married to a naturalized United States citizen, and was returning to his unlawful residence in the United States. The record reflects that the applicant was allowed by the immigration officer to voluntarily return to Mexico.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-  
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

\* \* \*

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

\* \* \*

(C) MISREPRESENTATION.-

\* \* \*

(ii) FALSELY CLAIMING CITIZENSHIP.-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 [1324a]) or any other Federal or State law is inadmissible.

Section 212(a)(6)(C)(ii) applies to false representations of citizenship made on or after September 30, 1996. By its plain language, this ground requires a showing that the false representation was made for a specific purpose: to satisfy a legal requirement or to obtain a benefit that would not be available to a noncitizen. This requirement also suggests that the individual must know that the representation is false.

To recapitulate, the record establishes that the applicant was found by a consular officer to be ineligible for admission under § 212(a)(9)(B)(v) of the Act. The officer in charge subsequently determined that the applicant is ineligible for admission under § 212(a)(6)(C)(ii) of the Act. Although the applicant is eligible to apply, and has applied in the instant case, for a waiver of inadmissibility as provided under § 212(a)(9)(B)(v), there is no waiver available for a finding of inadmissibility under § 212(a)(6)(C)(ii).

Service instructions at O.I. 212.7 provide that after receipt by a Service office, if grounds of inadmissibility other than those for which the waiver is sought are discovered, the application and all relating documents should be returned to the consular officer for reconsideration. Therefore, the applicant's appeal will be rejected and the decision of the officer in charge will be withdrawn. The officer in charge should return the application and all relating documents to the consular officer for reconsideration.

**ORDER:** The appeal is rejected. The decision of the officer in charge is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.