U.S. Department of Justice

Immigration and Naturalization Service

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

PUBLIC COPY

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: [redacted] Office: CIUDAD JUAREZ, MEXICO Date: AUG 28 2001

IN RE: Applicant: [redacted]

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:

[redacted]

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 section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days but less than one year. The applicant married a United States citizen in 1998 and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to travel to the United States to reside with his spouse.

The officer in charge found the applicant inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. 1182(a)(6)(C)(ii), for having falsely represented himself to be a citizen of the United States on two occasions: December 31, 1997 and January 9, 1998. The officer in charge concluded that the applicant was statutorily ineligible to file an application for waiver of inadmissibility and denied the application accordingly.

On appeal, counsel asserts that the applicant's claims to United States citizenship were retracted in a voluntary and timely manner thereby supporting reversal of the officer in charge's finding of inadmissibility. Counsel also asserts that regardless of the inadmissibility issue, the applicant's good moral character and the extreme hardship that his spouse would suffer if he were removed from the United States warrant approval of his waiver request.

The record reflects that the applicant sought to procure entry into the United States on December 31, 1997 by falsely claiming to be a citizen of the United States. He was found guilty and placed on three years probation, processed for expedited removal, and deported to Mexico on January 5, 1998. On January 9, 1998, the applicant was encountered by Service officers and again falsely claimed to be a United States citizen. He later recanted his claim, the prior Order of Removal was reinstated, and he was deported to Mexico on January 15, 1998.

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(i) of the Act states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a section 212(a)(6)(C)(i) violation due to passage of time. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. See Matter of Soriano, 21 I&N Dec. 516 (BIA 1996; A.G. 1997).

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. The record in the present case clearly establishes that the applicant is ineligible under section 212(a)(6)(C)(ii) in that he was found guilty on December 31, 1997 by the United States District Court, Southern District of Texas, Brownsville Division, of knowingly and willfully attempting to obtain admission into the United States by orally claiming to be a United States citizen, in violation of Title 8 U.S.C. Section 1325.

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

It should also be noted that the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) simultaneous with his application for a waiver of Ground of Excludability (Form I-601). No action has been taken on the Form I-212 and the applicant therefore remains inadmissible to the United States under section 212(a)(9)(A)(i) of the Act.

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.