U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 23877608

Date: JAN. 05, 2023

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico currently residing in Mexico, has applied for an immigrant visa. A foreign national seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility.

The U.S. Department of State (DOS) found the Applicant inadmissible for unlawful presence, section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II);[1] for being previously removed, section 212(a)(9)(A)(i) of the Act;[2] for reentering the United States without admission after being unlawfully present for over a year and after being ordered removed, sections 212(a)(9)(C)(i)(I)-(II) of the Act;[3] and for making a false claim to U.S. citizenship, section 212(a)(6)(B)(i)(II) of the Act.[4]

The Applicant sought a waiver of his inadmissibility for unlawful presence under section 212(a)(9)(B)(v) of the Act. U.S. Citizenship and Immigration Services may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Nebraska Service Center denied the application as a matter of discretion, concluding that approving the application could not render the Applicant admissible and so would serve no purpose. First, there is no waiver for inadmissibility under section 212(a)(6)(C)(ii) of the Act for making a false claim to U.S. citizenship. Second, the Applicant remains inadmissible under sections 212(a)(9)(C)(i)(I)-(II) of the Act for reentering the United States without admission after being unlawfully present for over a year and after being ordered removed. Under section 212(a)(9)(C)(ii) of the Act, there is no exception to these grounds of inadmissibility until 10 years

[1] Under section 212(a)(9)(B)(i)(II) of the Act, a noncitizen who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of departing the United States, is inadmissible.
[2] Under section 212(a)(9)(A)(i) of the Act, a noncitizen who has been ordered removed from the United States multiple times and who again seeks admission with 20 years of the date of removal is inadmissible.
[3] Under sections 212(a)(9)(C)(i)(I) and (II) of the Act, a noncitizen is inadmissible if they enter or attempt to enter the United States without admission after being unlawfully present for over one year or after being ordered removed from the United States.
[4] Under section 212(a)(6)(C)(ii) of the Act, a noncitizen who falsely represents themselves as a citizen of the United States for any purpose or benefit under federal or state law is inadmissible.

after the noncitizen departs this United States, which in the Applicant's case will be in 2028.[5] The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

Upon consideration of the entire record, including the arguments made on appeal, we adopt and affirm the Director's decision with the comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Additionally, we incorporate by reference the Director's summary of the Applicant's immigration history.

The record indicates that in [redacted] 2014, the Applicant attempted to enter the United States at a port of entry by orally claiming to be a U.S. citizen to a U.S. Customs and Border Protection (CBP) officer. The Applicant was referred to secondary inspection, where he was interviewed and made a sworn statement admitting that he was not a U.S. citizen and that his prior claim was false. He was then removed under section 235 of the Act for falsely claiming to be a U.S. citizen. At the Applicant's consular interview, DOS found that since he had claimed to be a U.S. citizen for the purpose of entering the United States, which is a benefit under federal law, he is inadmissible under section 212(a)(6)(C)(ii) of the Act.

On appeal, the Applicant asserts that he is not inadmissible on this ground because he was falsely accused by a CBP officer and never actually claimed to be a U.S. citizen. He further states that while he signed removal documents at the port of entry, he did not know what those documents said because he cannot read or write in English and there was no translator present.[6]

The record includes a Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, which is a written record of the Applicant's 2014 interview with CBP. The interview record includes the following exchange:

> Q: What did you say to the officer when you attempted to enter the United States?
> A: I lied to the officer and told him that I was United States citizen.

The Applicant initialed every page of the Form I-867A, which states that the interview was conducted in Spanish with an interpreter present. The Applicant also signed the accompanying Form I-867B, Jurat for Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, confirming that he'd read the statement (or had it read to him) and that it was a full, true, and correct record of his CBP interview. This signature was witnessed by both the CBP officer and the interpreter. The record

[5] The Applicant does not address this issue in the present appeal. The record indicates that he filed Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, to seek an exception to the inadmissibility, which the Director denied for the above-mentioned reasons.

[6] The letter the Applicant submits on appeal is written in English.

therefore indicates that a Spanish-language interpreter was present when the Applicant signed these documents, and that the Applicant was aware of their contents.[7]

The official acts of public officers are entitled to a presumption of regularity, and without clear evidence to the contrary, we presume that public officers have properly performed their duties. *See Latif v. Obama*, 666 F.3d 746, 748 (D.D.C. 2011) (citations omitted). This presumption also extends to government-produced documents like the Form I-867A. *Id.* Therefore, in this instance we presume that as public officials, the CBP officer and interpreter who interviewed the Applicant properly performed their duties when taking the Applicant's statement, translating it, and filling in the Form I-867A. The Applicant has not submitted sufficient evidence to overcome this presumption and rebut the contents of the Form I-867A, including his admission that he falsely claimed to be a U.S. citizen and his certification that he understood the contents of the form when he signed it.

Furthermore, because the Applicant is residing abroad and applying for an immigrant visa, DOS makes the final determination concerning inadmissibility. A DOS consular officer determined that the Applicant is inadmissible for, among other things, making a false claim of U.S. citizenship under section 212(a)(6)(C)(ii) of the Act. The Applicant has not overcome this DOS determination on appeal. The Director correctly concluded that no purpose would be served in adjudicating the present application because the Applicant would remain inadmissible under this ground, for which there is no waiver.

Finally, even if we accepted that the Applicant is not inadmissible under section 212(a)(6)(C)(ii) of the Act, which we do not, approving the waiver application still would not serve any purpose. As noted by the Director, the Applicant is statutorily ineligible for an exception to his inadmissibility under sections 212(a)(9)(C)(i)(I)-(II) of the Act until 2028, 10 years after his last departure from the United States. Section 212(a)(9)(C)(ii) of the Act. The Director did not err in denying the application as a matter of discretion. The application remains denied.

**ORDER:** The appeal is dismissed.

[7] It is noted that this was the Applicant's fourth time in removal proceedings, including a prior instance in 2011 where his sworn statement to CBP was also recorded on a Form I-867A/B that he initialed and signed.