

IN RE: [Name redacted]

FILE: [File name redacted]

OCT 05 2012

OFFICE: HARTFORD, CT

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)

ON BEHALF OF APPLICANT:

[Lawyer name redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry
Chief, Administrative Appeals Office

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DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied

by the Field Office Director, Hartford, Connecticut, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant is a native and citizen of Brazil, who was found to be inadmissible to the United States under 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), for having been unlawfully present in the United States for more than one year and seeking admission within ten years of his departure from the country. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §1182(a)(9)(B)(v), in order to live in the United States with his wife.

The record also reflects that the applicant is inadmissible pursuant to section 212(a)(6)(C)(ii)(I) of the Act, 8 U.S.C. §1182(a)(6)(C)(ii)(I), for falsely representing himself to be a U.S. citizen for any purpose or benefit under Federal law. There is no waiver available for this ground of inadmissibility.

In a decision dated August 24, 2010, the director concluded the applicant had failed to establish that a qualifying relative would experience extreme hardship if he were denied admission into the United States. The director also found the applicant had failed to establish that he merited a favorable exercise of discretion and considered the applicant's false claim to U.S. citizenship a negative discretionary factor. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that the basis for the director's decision is unclear, that hardship to the applicant's U.S. citizen son should have been considered, and that evidence establishes the applicant's U.S. citizen wife will experience extreme emotional and financial hardship if the applicant is denied admission into the United States. In support of these assertions, counsel submits an affidavit from the applicant.

The record contains an affidavit from the applicant's wife, medical evidence, employment and financial documentation, family photographs and educational information for the applicant's son. The entire record was reviewed and considered in rendering a decision on the appeal.

Counsel also asserts that because the applicant's appeal was untimely filed, it should be treated as a motion to reopen or reconsider under 8 C.F.R. § 103.5(a).

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an affected party must file the complete appeal within 30 days after service of an unfavorable decision. If the decision is mailed, the 30-day period for submitting an appeal begins three days after it is mailed. *See* 8 C.F.R. § 103.8(b). The date of filing is the date of actual receipt of the appeal, not the date of mailing. 8 C.F.R. §103.2(a)(7)(i). Under 8 C.F.R. § 103.3(a)(2)(v)(B)(2), an untimely appeal that meets the requirements of a motion to reopen or a motion to reconsider must be treated as a motion, and a decision must be made on the merits of the case. The official

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having jurisdiction over a motion is the official who made the last decision in the proceeding. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The record reflects that the director's decision was mailed to the applicant on August 24, 2010. The Form I-290B Notice of Appeal or Motion was filed at the Hartford, Connecticut field office on September 24, 2010, 32 days after the decision was mailed. The appeal therefore was filed timely.

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

(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

(II) Exception-In the case of an alien making a representation

described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

Aliens making false claims to U.S. citizenship on or after September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, are inadmissible under section 212(a)(6)(C)(ii)(I) of the Act and are ineligible for waiver consideration.

Upon review of the record, the AAO finds the applicant is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act, for falsely claiming

to be a U.S. citizen for a purpose or benefit under Federal law, namely to obtain a federally guaranteed home loan from a federal savings bank. The record contains a promissory note reflecting the applicant obtained a home mortgage loan through [Name redacted] A Federal Savings Bank, on June 30, 2004, after claiming to be a U.S. citizen. Title 12 of the United States Code, Section 1462, subsection 5 (Home Owner's Act) defines the term 'federal savings bank' as a bank chartered under section 1464 of the Home Owner's Act. 12 U.S.C. section 1464(a) provides further, in part, that:

In order to provide thrift institutions ... the extension of credit for homes and other goods and services, the Comptroller of the Currency is authorized, under such regulations as the Comptroller of the Currency may prescribe--

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- (1) to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings associations (including Federal savings banks).
- (2) To issue charters therefor.

The Comptroller of the Currency is a federal office established by, and under the direction of the Secretary of the Treasury. Federal savings banks are thus institutions authorized and regulated by the federal government, and mortgages issued by such banks are issued pursuant to the provisions of the Home Owner's Act, a U.S. federal statute. Accordingly, the applicant's home mortgage loan is a federal loan, and qualifies as a federal benefit for section 212(a)(6)(C)(ii) of the Act purposes.

Furthermore, the mortgage application documents contained in the record reflect that the applicant completed and signed a Freddie Mac /Fannie Mae Uniform Residential Loan form. Freddie Mac is a federal government-sponsored enterprise that operates under a federal charter as a private company serving a public purpose. The Federal Housing Finance Agency (FHFA) is the conservator of Freddie Mac and as conservator, FHFA has all rights, titles, powers, and privileges of Freddie Mac and any stockholder, officer, or director, with respect to the company and its assets. Additionally, the U.S. Department of the Treasury has entered into a Senior Preferred Stock Purchase Agreement with Freddie Mac. *See generally* <http://www.freddiemac.com>. Based on its unique relationship to the federal government, therefore, a home loan owned or guaranteed by Freddie Mac thus qualifies as a federal loan.

Further evidence that the applicant's loan qualifies as a federal loan is reflected in the acknowledgement and agreement section of his Uniform Residential Loan form, which states any intentional or negligent misrepresentation of the loan application information will result in civil liability 'and/or in criminal penalties' under Title 18, U.S. Code, Section 1001. A person who willfully and knowingly makes a materially false or fraudulent statement within the jurisdiction of the executive, legislative or judicial branch of the U.S. government may be fined or imprisoned for up to five years, or both. *See* 18 U.S.C. § 1001(a).

In the present matter, the Uniform Residential Loan form was signed by the applicant on April 20, 2004. On page three of the form, in the Declarations section, the applicant answered 'yes' to the question, 'Are you a U.S. citizen?'

According to Uniform Residential Loan form instructions, a loan applicant who is not a U.S. citizen or lawful permanent resident must establish that she or he is lawfully in the United States. Neither Freddie Mac nor Fannie Mae will purchase loans unless one of the three above situations is established. *See* http://www.freddiemac.com/learn/lo/docres/lo_doc_resid_immigr.html.

In *Dwumaah v. Attorney General of U.S.*, 609 F.3d 586 (3d Cir. 2010), the U.S. Third Circuit Court of Appeals upheld a Board of Immigration Appeals finding that a false claim to U.S. citizenship on an application for a federal student loan was for a federal purpose or benefit since U.S. citizens were eligible for such loans, but undocumented aliens were not (contrast *Hassan v.*

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Holder, 604 F.3d 915 (6th Cir. 2010), which held that a false claim to U.S. citizenship on a Small Business Administration loan application was not a false claim for a federal purpose or benefit as the applicant's immigration status was irrelevant to obtaining the loan). In the present matter the record reflects the applicant made a false claim to U.S. citizenship on an application for a federal home mortgage loan. Because the applicant was not a U.S. citizen, lawful permanent resident, or lawfully in the United States, he would not have qualified for the loan absent the U.S. citizenship claim.

The applicant asserts that his mortgage broker prepared his Uniform Residential Loan form and other loan documents, the applicant signed the documents without completing or reading them, and he was unaware of the U.S. citizenship claim made on the loan form. The AAO finds the applicant's assertions to be unconvincing. The applicant submits no evidence to corroborate his assertions. Moreover, the applicant's Uniform Residential Loan form reflects that it was completed by a loan preparer during a face-to face interview with the applicant, and the applicant's signature appears a few lines below the U.S. citizen question, which was answered by marking a 'yes' box. The applicant is therefore inadmissible under section 212(a)(6)(C)(ii)(I) of the Act, for making a false claim to U.S. citizenship for a federal benefit.

There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(6)(C)(ii)(I) of the Act, and the record fails to demonstrate that the applicant qualifies for the

exception described in section 212(a)(6)(C)(ii)(II) of the Act. As the applicant's inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act statutorily bars his admission to the United States, the AAO finds no purpose would be served in considering whether he is able to establish eligibility for a waiver under section 212(a)(9)(B)(i)(II) of the Act. The appeal shall therefore be dismissed.

ORDER: The appeal is dismissed.