



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 26399951

Date: June 8, 2023

Appeal of New York City, New York Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Peru, has applied for an immigrant visa and seeks a waiver of inadmissibility under section 245(h)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(h)(2)(B). The Director of the New York City, New York Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), finding that the Applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for making a false claim to citizenship. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis. We conclude that the record does not support the Director's finding that the Applicant is not eligible for a waiver under section 245(h) of the Act on account of a false claim to U.S. citizenship, because there was a timely retraction. Therefore, we will remand the case to the Director for consideration whether the Applicant is subject to any additional grounds for inadmissibility and, if so, whether the Applicant has established eligibility for a waiver of that inadmissibility.

I. LAW

Section 212(a)(6)(C)(ii) of the Act, provides that a noncitizen who, on or after September 30, 1996, falsely represents to be a citizen of the United States for any purpose or benefit under the Act or any other Federal or State law is inadmissible. There is no waiver for this ground of inadmissibility. Section 212(a)(6)(C)(iii) of the Act.

An applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act if he or she timely and voluntarily retracts the fraud or misrepresentation. *Matter of M—*, 9 I&N Dec. 118, 119 (BIA 1960) (holding that attempted fraud must be corrected “voluntarily and prior to any exposure”); *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (holding that where an alleged retraction “was not made until it appeared that the disclosure of the falsity of the statements was imminent [, it] is evident that the recantation was neither voluntary nor timely”). The USCIS Policy Manual states that for a

retraction to be effective, an applicant must correct his or her representation before being exposed by the officer or U.S. government official or before the conclusion of the proceeding during which he or she gave false testimony. 8 USCIS Policy Manual J.3(D)(6), <https://www.uscis.gov/policymanual>. The Foreign Affairs Manual also specifies that “[i]f the applicant has personally appeared and been interviewed, the retraction must have been made during that interview.” 9 FAM § 302.9-4(B)(3)(f). A person who makes a false claim to citizenship may make a timely retraction. 8 USCIS Policy Manual, *supra*, at K.2(E).

II. ANALYSIS

In this case, the Director found that the Applicant made two false claims to U.S. citizenship upon entry into the United States in April 2015: (1) an oral false claim to U.S. citizenship to a Customs and Border Patrol (CBP) Officer on the date of entry (Day 1); and (2) the presentation of an Arizona Identification Document (ID) to the Officer during the same incident. In a related decision denying the Applicant’s I-485, Application to Register Permanent Residence or Adjust Status (Form I-485),¹ the Director stated that the Applicant was referred to secondary inspection and interviewed by the CBP Officer the following day (Day 2). As documented on a signed Form I-877, Record of Sworn Statement in Administrative Proceedings (Form I-877), and highlighted by the Director, the Applicant recanted his claim to citizenship during this interview.

Upon de novo review, we conclude that CBP determined, in writing, that the false claim to U.S. citizenship was timely retracted, contemporaneously with the incident. On Day 1, the CBP Officer filled out a Form I-213, Record of Deportable/Inadmissible Alien (Form I-213), which is continued on a Form I-831 Continuation Page. The Form I-213, completed and signed on Day 1, states that the Applicant made a timely retraction of the false claim to U.S. citizenship. Through the Form I-213, the CBP Officer stated that on Day 1:

In the Passport Control Unit, the subject made a timely retraction to his claim to United States citizenship.

The timely retraction is corroborated by the Form I-862, Notice to Appear, served on the Applicant in person on Day 1 by the same CBP Officer, which does not charge the Applicant with making a false claim to U.S. citizenship. According to the Form I-831, on Day 1, the Applicant timely retracted his false claim to citizenship, voluntarily, and prior to exposure.²

Regarding the presentation of an Arizona ID, we agree with the arguments raised by the Applicant’s attorney on appeal that the Applicant’s presentation of an Arizona ID is not proof of U.S. citizenship and, accordingly, not a false claim to it. Citizens of foreign countries who are legally residing in the U.S. are eligible for state identification as well as driver licenses without establishing U.S. citizenship. See e.g., Arizona Department of Transportation, *Driver’s License Information, Foreign Applicants*, available at <https://azdot.gov/mvd/services/driver-services/driver-license-information/foreign->

¹ The decision on the Form I-601 states only that a false claim to U.S. citizenship was made, making reference to the Form I-485 which discusses the circumstances and fact-finding regarding the false claim to U.S. citizenship in detail.

² As highlighted by the Director, on Day 2, the same CBP Officer took a more detailed sworn statement on a Form I-877, which discusses the timely retraction. However, as explained in detail above, the record shows that the Applicant additionally timely retracted his claim on Day 1.

applicants; see also section 212(a)(6)(C)(ii)(I) of the Act (providing that a noncitizen who claims to be a U.S. national but not a U.S. citizen is not inadmissible for a false claim to U.S. citizenship).

In addition to finding a false claim to U.S. citizenship, the decision on the related Form I-485 found an additional misrepresentation was made at the Applicant's October 2020 adjustment of status interview. The decision highlighted that the Applicant admitted, during his interview with CBP, that he paid \$4,500.00 to an individual in return for the Arizona ID he utilized to attempt to enter the United States. The Director found that this admission was in conflict with the Applicant's characterization during an adjustment of status interview five years later, that [he was] kidnapped and told to use that ID and give it to CBP." The Director found the statement that the Applicant was kidnapped and told to use the ID and give it to CBP as "chang[ing his] story" as compared with his statement that he paid a smuggler who provided him with the Arizona ID.

The Form I-877 sworn statement, taken on Day 2, describes the Applicant's interactions with smugglers who assisted in his travel to the United States:

When we got to [REDACTED] he took me to an empty house where the other man [A-] was and they took everything from me. My cell phone, the money, my jewelry, everything. He told me to wait a few days while he got a hold of someone that could get me across. I was at the house since March 20th until March 30th. On the 30th he moved me to another house. I was at the second house until today [8 additional days]. He arrived and put me in the car and in the car he gave me the ID and told me to present the ID here and that I could get in.

Form I-877 at 4.

For a misrepresentation to be found willful, it must be determined that the applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. Matter of G-G-, 7 I&N Dec. 161 (BIA 1956). The misrepresentation must be made with knowledge of its falsity. Id. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from admission." Matter of Y-G-, 20 I&N Dec. 794, 796-97 (BIA 1994); Matter of Tijam, 22 I&N Dec. 408, 425 (BIA 1998); Matter of Healy and Goodchild, 17 I&N Dec. 22, 28-29 (BIA 1979). Upon remand, the Director may determine in the first instance whether the Applicant made a willful misrepresentation of a material fact at his adjustment interview such that he is additionally inadmissible under section 212(a)(6)(C)(i) of the Act and, if so, whether the Applicant has established eligibility for a waiver of such inadmissibility.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.