



**U.S. Citizenship
and Immigration
Services**

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

In Re: 26053843

Date: JUN. 12, 2023

Appeal of Irving, Texas Field Office Decision

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

The Applicant, a native and citizen of Mexico, has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). The Director of the Irving, Texas Field Office determined that the Applicant was inadmissible under section 212(a)(6)(C)(ii)(I) for falsely claiming to be a U.S. citizen. The Director then denied the application, concluding that there was no waiver for inadmissibility for a false claim to U.S. citizenship under section 212(a)(6)(C)(ii)(I). 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.

A noncitizen who has falsely represented himself as a citizen of the United States for any purpose or benefit under the Act or any other federal or state law is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act. No waiver is available for this ground of inadmissibility.

The Applicant seeks a waiver of inadmissibility due to a prior false claim to citizenship. The Applicant previously filed her waiver application and a Form I-485, Application to Register Permanent Residence or Adjust Status. The Director denied the waiver application because the Applicant did not establish a waiver was available to her. The Applicant filed a motion to reopen and motion to reconsider with the Director. The Applicant's case is now before us on appeal. Now, the Applicant argues the finding of inadmissibility and unavailability of a waiver was in error, noting duress should be considered as a factor.

The Applicant has explained throughout her various applications and interviews before U.S. Citizenship and Immigration Services (USCIS) that she was re-entering the United States after being taken to Mexico by her now ex-spouse, who she claims repeatedly beat, raped, and threatened to kill her. She has maintained that her ex-spouse was abusive daily, going so far as to shoot at her on at least one occasion. The Applicant also alleges on appeal that she was forced to return to the United States against her will in 1998 after her ex-spouse had smuggled her to Mexico, and it was during that forced return that she was made to present a birth certificate that did not belong to her to attempt to gain admission into the United States.

The Applicant initially attempted to enter the United States on December 28, 1998, at which time she was traveling in a taxicab with her ex-spouse. The Applicant admits on appeal she presented immigration officials with a birth certificate belonging to her U.S. citizen sister-in-law to gain entry into the United States. During this attempted entry, the Applicant was encountered by U.S. Customs and Border Protection agents at the border. Notes from the encounter contained in the government records indicate the Applicant and her ex-spouse were questioned jointly in the taxicab. The Applicant was then removed from the taxicab to be questioned separately from her ex-spouse. Ultimately, the Applicant was charged with making a false claim to U.S. citizenship, was served an order of expedited removal, and was immediately returned to Mexico. The following day, she entered the United States without admission or inspection via raft, and she has remained in the United States.

We agree with the conclusion that the Applicant is inadmissible for having made a false claim to U.S. citizenship. Although timely retraction can serve as a defense to inadmissibility under section 212(a)(6)(C) of the Act if it is voluntary and timely, the Applicant continued to maintain the birth certificate in her possession belonged to her throughout initial and into secondary questioning. *See Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (holding that a foreign national who recanted false testimony one year after the event, and only after it became apparent that the disclosure of the falsity of the statements was imminent, was not voluntary or timely); *Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949); *Matter of M-*, 9 I&N Dec. 118 (BIA 1960). A retraction can be voluntary and timely if made in response to an officer's question, during which the officer gives the applicant a chance to explain or correct a potential misrepresentation. 8 *USCIS Policy Manual* K.2(E)(3), <https://www.uscis.gov/policy-manual>. In the Applicant's case, she provided the birth certificate to immigration officials upon apprehension while trying to cross the border. She has since stated her ex-spouse had threatened her to force her to use her sister-in-law's birth certificate to return to the United States. She argues that she presented the birth certificate under threats from her ex-spouse, and she disclosed the falsehood of the documents at the first opportunity during which it was safe for her to do so; thus, she contends an exception should be made for her false claim made under duress. However, no such exception exists, and as a showing that the false representation to citizenship was intentional or knowing is not required under the Act, evidence that a false assertion was made under duress – or without intent – would not render the inadmissibility finding incorrect. *See Matter of Zhang*, 27 I&N Dec. 569 (BIA 2019). Therefore, we agree the Applicant is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act for her use of a birth certificate belonging to a U.S. citizen to attempt to gain admission to the United States, and we conclude the Director was correct in finding no waiver available for the Applicant under these circumstances. Thus, the Applicant's waiver application remains denied.

ORDER: The appeal is dismissed.