U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29319653

Date: NOV. 29, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, has applied to adjust status to that of a lawful permanent resident, which requires her to show, inter alia, that she is admissible to the United States or eligible for a waiver of inadmissibility. Section 245(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(a)(2). Among other inadmissibility grounds, she was found inadmissible for falsely claiming to be a U.S. citizen under section 212(a)(6)(C)(ii)(I) of Act, 8 U.S.C. § 1182(a)(6)(C)(ii)(I), and seeks a waiver of inadmissibility under section 212(i) of the Act. The Director of the Irving, Texas Field Office, denied the Applicant's waiver request, concluding that there was no waiver for inadmissibility for a false claim to U.S. citizenship, and we dismissed a subsequent appeal. The Applicant now files a motion to reconsider our previous decision.

A motion to reconsider must show that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought. The Applicant bears the burden of proof to establish her eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, the motion will be dismissed.

In our previous decision, incorporated here by reference, we determined that the record shows that the Applicant, when she was 32 years of age, falsely claimed to be a U.S. citizen when she attempted to enter the United States in December 1998 by presenting another individual's U.S. birth certificate to U.S. immigration officials, and she therefore was inadmissible under section 212(a)(6)(C)(ii)(I) of Act. We also determined that she did not timely retract her act of falsely claiming to be a U.S. citizen. In dismissing the Applicant's appeal, we further addressed in detail the alleged circumstances surrounding her attempted entry into the United States using her then sister-in-law's U.S. birth certificate, and also acknowledged the Applicant's claim that she used the false U.S. birth certificate at the Mexico-United States border under duress. However, we determined that there was no duress exception to section 212(a)(6)(C)(ii)(I) inadmissibility, contrary to the Applicant's assertions. We further noted that there was no waiver for this inadmissibility ground, and also determined that no other exception was available to the Applicant.

On the instant motion to reconsider, the Applicant does not contest our determination of her inadmissibility for false claim to U.S. citizenship or the underlying facts and evidence in the record on which we relied in making the determination. She also admits that there is no statutory waiver for

section 212(a)(6)(C)(ii)(I) inadmissibility for making a false claim to U.S. citizenship. However, she avers that we erred in concluding that there is no duress exception to this inadmissibility ground. In alleging this error, the Applicant submits a supplemental brief that contains substantially similar, if not identical, arguments that she previously presented to us on appeal, and again reasserts on motion that we must recognize a duress exception and waive her inadmissibility.

We have previously considered the Applicant's duress exception argument and properly concluded that no such exception is available to her. United States Courts of Appeals have consistently held that there is no waiver for section 212(a)(6)(C)(ii)(I) inadmissibility for making a false claim to U.S. citizenship and that the *only limited exception* for this inadmissibility can be found at section 212(a)(6)(C)(ii)(II) of the Act, which is not appliable to the Applicant's waiver case here. *See, e.g.*, *Theodros v. Gonzales*, 490 F.3d 396, 399, 402, n.7 (5th Cir. 2007); *Sandoval v. Holder*, 641 F.3d 982, 986, 990 (8th Cir. 2011); *Dakura v. Holder*, 772 F.3d 994, 998 & n.6 (4th Cir. 2014); *see also Matter of Richmond*, 26 I&N Dec. 779, 783 (BIA 2016) (noting that the plain language of section 212(a)(6)(C)(ii)(I) of the Act for false claim to U.S. citizenship encompasses *any such false claim*, with *one* exception under section 212(a)(6)(C)(ii)(II) of the Act); *Matter of Zhang*, 27 I&N Dec. 569, 571 (BIA 2019) (stating that Congress "carved out" only one *narrow exception* to the nearly identical removability ground for those who falsely claim to be U.S. citizens, which does not require a showing of knowledge or willfulness of such false claim). Further, the Supreme Court of the United States has also "repeatedly cautioned against reading words, elements, or implied exceptions into a statute." *Matter of Negusie*, 28 I&N Dec. 120, 126 (A.G. 2020) (citing *Dean v. United States*, 556 U.S. 568, 572 (2009); *Bates v. United States*, 522 U.S. 23, 29 (1997)). Apart from reiterating on motion the same duress exception claim, which we fully considered previously, the Applicant does not provide persuasive arguments or cite pertinent legal authority establishing error in our prior determination that there is no duress exception for inadmissibility for falsely claiming to be a U.S. citizen under the Act. *See, e.g.*, *Dakura*, 772 F.3d at 1001 (noting that noncitizens bear the burden of showing that they are not inadmissible; and denying petition for review *as a matter of law*, in part because the noncitizen who made a false claim to U.S. citizenship allegedly under duress presented no authority for the proposition that such claimed circumstances render them not legally inadmissible for purposes of section 212(a)(6)(C)(ii)(I) inadmissibility).

The instant motion does not establish how we specifically erred in our previous decision. As the Applicant has not established that our prior decision was based on an incorrect application of law or policy, or that it was incorrect based on the evidence then before us, she has not met the requirements for a motion to reconsider. 8 C.F.R. § 103.5(a)(3).

ORDER: The motion to reconsider is dismissed.