

9 FAM 40.63 MISREPRESENTATION; FALSELY CLAIMING CITIZENSHIP

*(CT:VISA-1229; 06-12-2009)
(Office of Origin: CA/VO/L/R)*

9 FAM 40.63 RELATED STATUTORY PROVISIONS

(CT:VISA-1229; 06-12-2009)

See INA 212(a)(6)(C) (8 U.S.C. 1182(a)(6)(C)), INA 212(i) (8 U.S.C. 1182(i)), and INA 237(a)(3)(A)&(D) (8 U.S.C. 1227(a)(3)(D)).

INA 212(a)(6)(C)

(6) Illegal entrants and immigration violators.-

(C) Misrepresentation.-

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- (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.

- (iii) Waiver authorized-
For provision authorizing waiver of clause (i), see subsection (i).

INA 212(i)

i. Admission of *Immigrant Inadmissible* for *Fraud* or *Willful Misrepresentation* of *Material* Fact

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.
- (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

INA 237 (8 U.S.C. 1227) General Classes of Deportable Aliens

INA 237(a)

a. Classes of Deportable Aliens

Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

INA 237(a)(3)(A)

(3) Failure to register and falsification of documents.-

(A) Change of address

An alien who has failed to comply with the provisions of section 265 is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

INA 237(a)(3)(D)

(D) Falsely Claiming Citizenship-

- (i) *In general*
Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any Federal or State law is deportable.
- (ii) *Exception*
In the case of an alien making a representation described in clause (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 deportable under any provision of this subsection based on such representation.

9 FAM 40.63 RELATED REGULATORY PROVISIONS

(CT:VISA-1229; 06-12-2009)

22 CFR 40.63

40.63 Misrepresentation; Falsely claiming citizenship.

- (a) **Fraud and misrepresentation and INA 212(a)(6)(C) applicability to certain refugees.** An alien who seeks to procure, or has sought to procure, or has procured a visa, other documentation, or entry into the United States or other benefit provided under the INA by fraud or by willfully misrepresenting a material fact at any time shall be ineligible under INA 212(a)(6)(C); **Provided**, That the provisions of this paragraph are not applicable if the fraud or misrepresentation was committed by an alien at the time the alien sought entry into a country other than the United States or obtained travel documents as a bona fide refugee and the refugee was in fear of being repatriated to a former homeland if the facts were disclosed in connection with an application for a visa to enter the United States: **Provided further**, That the fraud or misrepresentation was not committed by such refugee for the purpose of evading the quota or numerical restrictions of the U.S. immigration laws, or investigation of the alien's record at the place of former residence or elsewhere in connection with an application for a visa.

- (b) **Misrepresentation in application under Displaced Persons Act or Refugee Relief Act.** Subject to the conditions stated in INA 212(a)(6)(c)(i), an alien who is found by the consular officer to have made a willful misrepresentation within the meaning of section 10 of the Displaced Persons Act of 1948, as amended, for the purpose of gaining admission into the United States as an eligible displaced person, or to have made a material misrepresentation within the meaning of section 11(e) of the Refugee Relief Act of 1953, as amended, for the purpose of gaining admission into the United States as an alien eligible there under , shall be considered ineligible under the provisions of INA 212(a)(6)(C).
- (c) **Waiver of ineligibility**—*INA 212(i)*. If an immigrant applicant is ineligible under INA 212(a)(6)(C) but is qualified to seek the benefits of INA 212(i), the consular officer shall inform the alien of the procedure for applying to DHS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from DHS of the approval of the alien's application under INA 212(i).

56 FR 30422, July 2, 1991, as amended at 61 FR 1835, Jan. 24, 1996;
71 FR 34519 (6/15/06).