



**Homeland  
Security**

September 12, 2013

The Honorable Harry Reid  
Majority Leader  
United States Senate  
Washington, DC 20510

Dear Senator Reid:

Thank you for your August 1, 2013 letter regarding Department of Homeland Security (DHS) policy related to immigrant cases in which minors have been found inadmissible for falsely claiming U.S. citizenship. We appreciate your concerns in this matter.

In 2012, the DHS Office of the General Counsel conducted a review of our application of section 212 (a)(6)(C)(ii) of the Immigration and Nationality Act (INA) and shared with the Department of State an informal notice of a change in the DHS application of the provision to minors. On December 6, 2012, the DHS Office of the General Counsel issued an opinion formally addressing this issue. Although DHS has not made the opinion public, DHS formally advised the Department of State on May 30, 2013, of the General Counsel's conclusions that:

- (1) Only a *knowingly* false claim can support a charge that an individual is inadmissible under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act. The individual claiming not to know that the claim to citizenship was false has the burden of establishing this affirmative defense by the appropriate standard of proof (for applicants for admission or adjustment, "clearly and beyond doubt").
- (2) A separate affirmative defense is that the individual was (a) under the age of 18 at the time of the false citizenship claim; *and* (b) at that time lacked the capacity to understand and appreciate the nature and consequences of a false claim to citizenship. The individual must establish this claim by the appropriate standard of proof (for applicants for admission or adjustment, "clearly and beyond doubt").

U.S. Citizenship and Immigration Services (USCIS), a component agency of DHS, has provided its field attorneys with guidance to reflect this opinion. USCIS plans to

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update the Adjudicator's Field Manual accordingly to provide clarity both for its officers and the public. DHS is also consulting with the Department of State on procedures for applying this new interpretation to cases in which individuals have been previously denied admission.

Thank you again for your letter. Should you wish to discuss this further, please do not hesitate to contact me at (202) 447-5890.

Respectfully,

A handwritten signature in blue ink, appearing to read "Brian de Vallance", with a long horizontal flourish extending to the right.

Brian de Vallance  
Acting Assistant Secretary for Legislative Affairs





United States Department of State  
Washington, D.C. 20520

AUG 29 2013

Dear Senator Reid:

Thank you for your letter of August 1 regarding the application of section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (INA) to the immigrant visa case of [REDACTED]. We appreciate your concerns in this matter.

In 2012, the Department of Homeland Security (DHS) undertook a review of their application of sections 212 (a)(6)(C)(ii). We received informal notice of a change in their application of the provision to minors in August of that year. In response, we issued interim guidance to our consulates and embassies abroad, and requested formal confirmation of the change from DHS in order to issue final guidance. On May 30, 2013, we received official confirmation that the Office of the General Counsel, DHS, issued, but has not published, an opinion concluding that:

(1) Only a *knowingly* false claim can support a charge that an individual is inadmissible under section 212(a)(6)(C)(ii) of the INA. The individual claiming not to know that the claim to citizenship was false has the burden of establishing this affirmative defense by the appropriate standard of proof (for applicants for admission or adjustment, "clearly and beyond doubt").

(2) A separate affirmative defense is that the individual was (a) under the age of 18 at the time of the false citizenship claim; *and* (b) at that time lacked the capacity to understand and appreciate the nature and consequences of a false claim to citizenship. The individual must establish this claim by the appropriate standard of proof (for applicants for admission or adjustment, "clearly and beyond doubt").

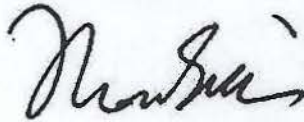
In response to this DHS opinion and upon DHS clearance, we plan to publish updated language in the Department of State Foreign Affairs Manual (FAM) soon. We are consulting with DHS on procedures for applying this new

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interpretation to individuals who have been previously denied. Additionally, [REDACTED] [REDACTED] will be re-interviewed by a consular officer on August 28, at which time they will review his case in light of this new guidance. We will keep you apprised of further developments on this matter.

We hope this information is responsive to your concerns. Please do not hesitate to contact us on this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Tom Gibbons', written in a cursive style.

Thomas B. Gibbons  
Acting Assistant Secretary  
Legislative Affairs