

1 UNITED STATES COURT OF APPEALS
2
3 FOR THE SECOND CIRCUIT
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6
7 August Term, 2011
8 (Argued: February 9, 2012 Decided: February 23, 2012)
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10 Docket No. 11-1123-ag
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12
13 ANTHONY GERARD CROCOCK,
14

15 *Petitioner,*

16 -v.-

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18 ERIC H. HOLDER, JR., United States Attorney General,
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20 *Respondent.*
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24 Before: Wesley, Lohier, *Circuit Judges*, Mauskopf,
25 *District Judge.*¹

26 Petitioner seeks review of an order of the Board of
27 Immigration Appeals finding him ineligible for adjustment of
28 status due to his inadmissability under section
29 212(a)(6)(C)(ii) of the Immigration and Nationality Act, 8
30 U.S.C. § 1182 (a)(6)(C)(ii), for falsely representing
31 himself to be a United States citizen. Petitioner did not
32 meet his burden of demonstrating that he did not represent
33 himself to be a United States citizen when he checked the
34 "citizen or national" box on an I-9 Employment Eligibility
35 Verification Form. Accordingly, we deny the petition for
36 review.
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38 **DENIED.**
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¹Judge Roslynn R. Mauskopf, of the United States District Court for the Eastern District of New York, sitting by designation.

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3 JAMES E. SWAINE, Law Offices of James E. Swaine,
4 Hamden, CT, *for Petitioner*.
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6 BROOKE M. MAURER, Attorney, Office of Immigration
7 Litigation, Civil Division (Tony West,
8 Assistant Attorney General, Richard M. Evans,
9 Assistant Director, Nancy E. Friedman, Senior
10 Litigation Counsel, *on the brief*), for Eric H.
11 Holder, Jr., United States Attorney General,
12 Washington, D.C., *for Respondent*.
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16 PER CURIAM:
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18 Petitioner Anthony Gerard Crocock petitions for review
19 of an order of the Board of Immigration Appeals ("BIA")
20 affirming an Immigration Judge's ("IJ") determination that
21 Crocock was ineligible for adjustment of status. The IJ
22 determined that Crocock failed to meet his burden of
23 demonstrating that he was not inadmissible under Immigration
24 and Nationality Act ("INA") § 212(a)(6)(C)(ii), 8 U.S.C. §
25 1182 (a)(6)(C)(ii), for falsely representing himself as a
26 United States citizen for the purpose of any benefit under
27 the INA. Crocock had checked the box on an I-9 Employment
28 Eligibility Form ("I-9") indicating that he was a "citizen
29 or national" of the United States when he applied for a job.
30 Crocock argues that he checked the "citizen or national" box
31 on the I-9 with the intent of claiming nationality and that
32 due to the ambiguity of the statement, the I-9 alone is

1 insufficient to establish his inadmissibility. Because it
2 is Crocock's burden to demonstrate that he is not
3 inadmissible under 8 U.S.C. § 1255(a), we find no error in
4 the agency's determination and deny the petition for review.

5 **Background**

6 In January 2004, Crocock, a native and citizen of
7 Ireland, entered the United States on a non-immigrant
8 student visa to complete a paramedic certification program.
9 Following completion of his paramedic course and training
10 and the subsequent expiration of his student visa and work
11 authorization, Crocock applied for and, in October 2004,
12 obtained a position with the fire department in Saco, Maine.
13 In order to obtain this position, Crocock completed an I-9
14 attesting to his employment eligibility by checking the box
15 on the form labeled "citizen or national." In April 2006,
16 based on a tip from a confidential informant, Crocock was
17 charged by the Department of Homeland Security with
18 removability under INA § 237(a)(1)(B), 8 U.S.C.
19 § 1227(a)(1)(B), for remaining in the United States beyond
20 the authorized period and under INA § 237(a)(3)(D), 8 U.S.C.
21 § 1227(a)(3)(D), as an alien who falsely represented himself
22 to be a citizen of the United States for any purpose or
23 benefit under the INA. Shortly thereafter, Crocock pled

1 guilty in the United States District Court for the District
2 of Maine to making a false attestation on an Employment
3 Verification System Form in violation of 18 U.S.C. § 1546(a)
4 and (b), and was subsequently charged with an additional
5 ground of removability under 8 U.S.C. § 1227(a)(2)(A)(i) for
6 having been convicted of a crime involving moral turpitude.
7 Before the IJ, Crocock conceded that he was removable for
8 remaining in the United States beyond the authorized period,
9 and he applied for adjustment of status based on his June
10 2006 marriage to a United States citizen.

11 In November 2008, the IJ found Crocock removable based
12 on his overstay and his conviction under 18 U.S.C. § 1546,
13 which the IJ determined to be a crime involving moral
14 turpitude. The IJ further found that Crocock was ineligible
15 for an adjustment of status because he was inadmissible
16 under 8 U.S.C. § 1182(a)(6)(C)(ii) as an alien who falsely
17 represented himself to be a citizen of the United States.
18 The IJ found that Crocock had not demonstrated that he was
19 admissible because, although Crocock claimed to have
20 believed that he was a "national" when he checked the box on
21 the I-9, Crocock had admitted to an immigration officer that
22 he had falsely claimed to be a United States citizen,
23 offered confusing testimony as to whether he believed he was

1 a national of the United States, and pled guilty to making a
2 false attestation on the I-9. Crocock appealed the IJ's
3 decision to the BIA, which affirmed the IJ's decision in
4 February 2011 and dismissed Crocock's appeal.

5 Crocock now argues that the I-9 is ambiguous as to
6 whether an individual who checks the "citizen or national"
7 box makes a representation of citizenship, and argues that
8 he claimed, falsely or otherwise, to be a national and not a
9 United States citizen on the I-9. He concludes that he is
10 admissible to the United States and eligible for adjustment
11 of status because 8 U.S.C. § 1182(a)(6)(C)(ii) applies only
12 to false claims of United States citizenship.²

13 Discussion

14 Under the circumstances of this case, we review the
15 decision of the IJ as supplemented by the BIA. See *Chen v.*
16 *Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). Although we
17 lack jurisdiction to review a discretionary denial of
18 adjustment of status, see 8 U.S.C. § 1252(a)(2)(B)(i); *Ruiz*
19 *v. Mukasey*, 552 F.3d 269, 275 n.4 (2d Cir. 2009), we retain
20 jurisdiction to review constitutional claims or questions of
21 law raised in a petition for review, including whether an

²Crocock does not contest that his representation, made in order to obtain employment, was for a purpose or benefit under the INA.

1 alien is eligible for adjustment of status, *Aslam v.*
2 *Mukasey*, 537 F.3d 110, 115 (2d Cir. 2008) (per curiam). We
3 review such claims *de novo*. See *Lecaj v. Holder*, 616 F.3d
4 111, 114 (2d Cir. 2010).

5 To qualify for adjustment of status, an alien must
6 demonstrate that he is "admissible to the United States for
7 permanent residence." 8 U.S.C. § 1255(a)(2). Because
8 applicants for adjustment of status are "assimilated to the
9 position" of aliens seeking entry into this country, *Drax v.*
10 *Reno*, 338 F.3d 98, 113 (2d Cir. 2003) (internal quotation
11 marks omitted), such aliens must show that they are "clearly
12 and beyond doubt" entitled to be admitted, see *Ibragimov v.*
13 *Gonzales*, 476 F.3d 125, 131 (2d Cir. 2007).³

14 As Crocock sought relief from removal in the form of
15 adjustment of status, he was required to demonstrate that he
16 did not falsely represent himself to be a U.S. citizen. See
17 8 U.S.C. § 1182(a)(6)(C)(ii)(I) ("Any alien who falsely

³Crocock contends that this "clearly and beyond doubt" standard is too harsh, as evidenced by the fact that the BIA indicated that it was applying a preponderance of the evidence standard. The BIA concluded, however, that Crocock failed to show that he clearly and beyond a doubt was admissible because he did not demonstrate by a preponderance of the evidence that he had not held himself out to be a citizen, and there is no indication that the IJ applied a different standard. To the extent Crocock challenges the application of the "clearly and beyond a doubt" standard, he appears to confuse the substantive standard for establishing admissibility with the evidentiary burden required to demonstrate that he has satisfied the applicable substantive criteria.

1 represents, or has falsely represented, himself or herself
2 to be a citizen of the United States for any purpose or
3 benefit . . . is inadmissible.”). Crocock argues that his
4 attestation to being a “citizen or national” on the I-9 is
5 alone insufficient to establish his inadmissibility because
6 he checked the box while claiming to be a national, which is
7 not a ground of inadmissibility. Crocock correctly argues
8 that a false claim of nationality, made either intentionally
9 or mistakenly, does not render an alien inadmissible under
10 U.S.C. § 1182(a)(6)(C)(ii). However, the burden of
11 demonstrating admissibility is squarely on Appellant. See
12 *Ibragimov*, 476 F.3d at 131. Here, Crocock was required to
13 prove a negative—that he did not falsely claim United States
14 citizenship.

15 We find no error in the agency’s determination that he
16 failed to meet his burden. Because the I-9 shows that
17 Crocock claimed to be a citizen or national, he had the
18 burden of showing that he claimed to be a national, not a
19 citizen. Crocock points to no evidence beyond his testimony
20 to demonstrate that he thought he was a national when
21 completing the I-9. Furthermore, his assertion that he was
22 claiming to be a national at the time he completed the I-9
23 is undermined by his later admission before the IJ that he

1 did not believe himself to be a national, as well as his
2 prior statement to an immigration officer in which he
3 characterized himself as a United States citizen in order to
4 obtain his "dream job." Ultimately, because Crocock bears
5 the burden of demonstrating that he did not falsely claim to
6 be a United States citizen and because he points to no
7 additional evidence supporting his claim that he believed he
8 was a U.S. national, we find no error in the agency's
9 conclusion that Crocock failed to carry his burden of
10 establishing admissibility. See *Ateka v. Ashcroft*, 384 F.3d
11 954, 958 (8th Cir. 2004).

12 **Conclusion**

13 For the foregoing reasons, the petition for review is
14 **DENIED**. As we have completed our review, the stay of
15 removal previously granted is **VACATED**.