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FILE: [REDACTED] Office: CHERRY HILL, NJ Date: AUG 05 2005

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Cherry Hill, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of Sierra Leone who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation and for misrepresenting information regarding her marital history. The applicant is the spouse of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 21, 2003.

On appeal, counsel asserts that the district director erred in stating that the applicant never left the United States since her entry on December 13, 1984 as the applicant was granted voluntary departure on November 19, 1986 and she departed the country thereafter and that the applicant did not have a legal marriage to [REDACTED]. See Attachment in Support of Appeal, dated May 17, 2004.

The record contains previously submitted documents including two letters from the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

The district director's intent to deny letter states that the applicant, [REDACTED] entered the United States on December 13, 1984 with a passport and visa issued to [REDACTED]. *Intent to Deny*, at 1, dated January 14, 2003. The district director also states that the applicant was married to Jeward Sesay and did not receive a divorce from him before her second marriage. *Id.* However, the applicant stated on her Form G-325, Biographic Information, that the marriage to her current U.S. citizen spouse was her first. As a result of these prior misrepresentations as determined by the district director, the applicant was found to be inadmissible under section 212(a)(6)(C) of the Act.

The AAO notes that the record is unclear as to the true identity of the applicant. The record includes a Gambian passport for [REDACTED] a letter from [REDACTED] stating that her name used to be [REDACTED] a passport from Sierra Leone for [REDACTED] (maiden name for [REDACTED] as indicated on her marriage certificate to [REDACTED] and a sworn statement from [REDACTED] [sic] [REDACTED] stating that she married [REDACTED] [sic] [REDACTED] on November 17, 1979 in Gambia and never divorced him. Therefore, it appears that the applicant's true identity may be [REDACTED]. If the applicant's true identity is [REDACTED] then she misrepresented herself as [REDACTED] when seeking admission to the United States on May 19, 1989 and in her application to adjust status. In the alternative, if the applicant's true identity is [REDACTED] and she used another person's Gambian passport for entry, namely [REDACTED] port, then she misrepresented herself as [REDACTED] her December 13, 1984 admission to the United States.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 [Secretary] 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.

The AAO notes that the district director incorrectly listed section 8 CFR 212(i) of the Act as the relevant waiver provision. *Intent to Deny*, at 1. However, this statement combines the Code of Federal Regulations and the Act into one erroneous cite. Furthermore, the district director cites an old version of the Act which does not include the current requirement of extreme hardship. The relevant, accurate waiver provision has been cited previously in this decision.

Counsel makes several assertions which are not relevant to the statutory requirement of extreme hardship. However, in the event that extreme hardship is found, these assertions are relevant in granting a waiver as a matter of discretion. First, counsel asserts that the district director erred in stating that the applicant never left the United States since her entry on December 13, 1984 as the applicant was granted voluntary departure on November 19, 1986 and she departed the country thereafter. *See Attachment in Support of Appeal*. The record reflects that the applicant entered the United States on May 19, 1989. *See Applicant's Passport*, at 7. Therefore, the applicant must have left the United States since her entry on December 13, 1984. The applicant also traveled pursuant to an advance parole document in October 2001. *See I-94*.

Second, counsel asserts that the applicant did not have a legal marriage to [REDACTED]. *Attachment in Support of Appeal*. The record includes marriage photos and a sworn statement from [REDACTED] in which she states that she married Jaward [sic] Sesay in a tribal ceremony on November 17, 1979 in Gambia and never divorced him. However, there is no civil marriage certificate in the record or evidence that this was a legally recognized marriage in Gambia. Therefore, the record is not clear as to whether the applicant had a marriage to [REDACTED] which would be recognized by the United States government.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of lawful permanent resident or United States citizen family ties to this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant

conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Therefore, based on the facts of this case, an analysis under the factors mentioned in *Matter of Cervantes-Gonzalez* is appropriate. The record does not mention any family ties to the United States for the applicant's spouse. The AAO notes that the applicant filed her 2001 and 2000 federal tax returns as single, however, the record does not indicate that she is divorced from her spouse. The record does not mention family ties outside of the United States for the applicant's spouse. The record does not mention the conditions in the country to which the applicant's spouse would relocate and the extent of the applicant's spouse's ties in that country. There is no mention of the financial impact of departure from this country. There is no mention of any significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the applicant's spouse would relocate. Based on the record, the AAO agrees with the district director's decision that the applicant has not demonstrated extreme hardship to a qualifying relative. Extreme hardship has not been shown in the event that the applicant's spouse relocates to Sierra Leone or Gambia, depending on where the applicant is actually from, or in the event that he remains in the United States.

The district director mentions that the applicant stated that she "separated" shortly after her marriage to her current spouse. *Intent to Deny*, at 1. The record is not clear as to whether the applicant is residing with, or has a relationship with, her husband, however, there is no divorce decree in the record.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch* 21 I & N, Dec. 627 (BIA 1996) held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant and is sympathetic to his situation, assuming the applicant and her spouse are still in a relationship. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.