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APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 244(c)(2)(A)(ii) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1254(c)(2)(A)(ii)

ON BEHALF OF PETITIONER:

[REDACTED]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Phoenix, Arizona. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Somalia, applying for temporary protected status (TPS) under section 244 of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1254. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraudulent use of a passport to obtain admission to the United States.

The district director found that the applicant had failed to establish eligibility for a waiver of inadmissibility because the applicant failed to demonstrate how “[a] letter from the Executive Office for Immigration Review . . . ; a copy of your driver’s license; a copy of your Social Security Card and a copy of your employment authorization . . . establishes that you should not be required to depart the United States for humanitarian purposes, to assure family unity or in the public interest.” *Interim District Director’s Decision*, dated September 3, 2003. The application was denied accordingly.

On appeal, counsel does not contest the finding of inadmissibility, but contends that the district director failed to consider all of the relevant factors in the waiver determination, particularly country conditions in Somalia.

Section 244(c)(2) of the Act, 8 U.S.C. § 1254(c)(2)(A)(ii), provides, in pertinent part:

(A) Waiver of certain grounds of inadmissibility.—

...

(ii) except as provided in clause (iii), the Attorney General [now Secretary of Homeland Security] may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

The record reflects that Somalia has been without a functioning central government since 1991. *See U.S. Department of State Country Reports on Human Rights Practices, Somalia* (March 6, 2006). On July 13, 2006, the Secretary of Homeland Security, under section 244 of the Act, 8 U.S.C. § 1254, extended the TPS designation for Somalia, stating in part:

[D]HS and the Department of State (DOS) have continued to review conditions in Somalia, which remain dire. DOS submitted a memorandum (“DOS Recommendation”) to USCIS recommending the extension of TPS for Somalia. Based on this review, an 18-month extension of the TPS designation is warranted because the armed conflict and extraordinary and temporary conditions that prompted [the] designation persist

Somalia has persisted in a state of chaos since the fall of Siad Barre regime in January 1991, characterized by the lack of central government, a crippled economy, the absence of civil structures, and the destruction of infrastructure (“DOS Recommendation”). Generalized “insecurity” persists in the form of banditry, kidnapping, looting, revenge killings, targeted

assassinations, and inter-clan fighting. *Id.* The result has been population displacement, loss of livelihoods, food “insecurity,” and a total lack of government services. *Id.* The current security situation generally prevents Somalis from repatriating in safety. *Id.* Major regions of the country are under the control of self-proclaimed “governors,” or warlords, in the absence of any rule of law. *Id.* . . .

[P]roblems that persist include a violent political power struggle, extremist activity in Mogadishu, a severe drought and famine, and violent clashes over scarce water, land and grazing rights. *Id.*

The United Nations (UN) Somalia country team, which consists of the heads of the relevant UN humanitarian aid offices present in Somalia and the surrounding region, reported that Somalia is plagued by extreme levels of suffering. *Id.* Polio has reappeared and there are presently more war-wounded people living in Somalia than in any other African country. *Id.* The number of people directly affected by this humanitarian emergency situation is 915,000. *Id.* The UN High Commissioner for Refugees reported that there were 407,060 internally displaced persons (IDPs) in Somalia, of which 250,000 are located in the capital, Mogadishu. (ORAIO [USCIS Office of Refugee, Asylum and International Operations Report] Report [June 21, 2006]). Severe drought and localized conflicts during 2005 necessitated urgent humanitarian assistance during the first half of 2006 for an estimated additional 1.7 million Somalis . . . *Id.*

Based upon this review, the Secretary of Homeland Security, after consultation with appropriate Government agencies, finds that the conditions for designation of Somalia for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A) (describing procedures for period review of TPS designations). There is an ongoing armed conflict and extraordinary and temporary conditions in Somalia that prevent aliens who are nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) from returning in safety [71 Fed. Reg. 42654, 42655 (July 27, 2006).

The record reflects that the applicant has not resided in Somalia for any significant period of time since 1986, and was last only briefly in Somalia in 1995. *See* Decision and Order of the Immigration Judge at 3, 6-7 (February 8, 2001). The applicant testified before the immigration judge that he feared returning to Somalia primarily due to his tribal affiliation and close relationship with his uncle, who held a “high position” in the Siad Barre regime. *See id.*, at 4. This testimony was found credible. *Id.* at 11-12. The applicant was not able to locate his natural parents during his brief return to Somalia, and his remaining family that raised him has also fled the country. *Id.* at 6-7. The applicant claims to have used false documents to attempt entry to the United States for the purpose of seeking asylum, since he had already been denied asylum in the Netherlands and continued to fear persecution in and deportation to Somalia. *See* Statement of [REDACTED] (October 10, 2003). Without regard to the merits of the applicant’s asylum claim, his credible testimony before the immigration judge and country conditions in Somalia sufficiently establish that the chaos and devastation that characterize country conditions in general, combined with the applicant’s lack of family ties in Somalia to receive, support, and assist him, provide adequate justification for waiving the applicant’s inadmissibility for humanitarian purposes under the provisions of section 244(c)(2)(A)(ii) of the Act.

The grant or denial of the above waiver does not turn only on whether the applicant has established sufficient humanitarian concerns. It also depends on a determination that the applicant merits a favorable exercise of discretion by the Secretary of Homeland Security.

The favorable factors in this matter are the deplorable political and social conditions that the applicant would face if he were returned to Somalia, and the applicant's family ties to three lawful permanent resident first cousins. The unfavorable factor in this matter is the applicant's willful misrepresentation to officials of the U.S. Government in seeking to obtain admission to the United States. The AAO finds that the humanitarian concerns raised by the prospect of returning the applicant to Somalia outweigh the unfavorable factor in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 244(c)(2)(A), the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.