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U.S. Citizenship
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Services

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FILE:

Office: BALTIMORE, MD

Date: JUN 10 2005

IN RE:

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, Baltimore, Maryland. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a Citizenship and Immigration Services (CIS) motion to reopen. The motion will be granted and the previous decisions of the district director and the AAO will be affirmed.

The applicant is a native and citizen of Kenya who was admitted to the United States in 1999 with a F-1 student visa by falsely claiming to be a student. The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). She 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 with her spouse.

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 May 20, 2002. The decision of the district director was affirmed on appeal by the AAO. *Decision of the AAO*, dated July 17, 2003.

On motion to reopen and reconsider, counsel asserts that the politically-motivated arrests of relatives of the applicant would adversely affect the applicant and her spouse if they were to relocate to Kenya. *Motion to Reopen and Reconsider*, dated August 5, 2003.

In support of these assertions, counsel submits an affidavit of the applicant's brother, dated August 4, 2003; news articles and publications relating to the charges against family members of the applicant; a statement of the applicant and copies of the certificates of birth for the applicant's sister and brother. The entire record was considered in rendering this decision.

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

- (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:

- (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.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel submits an affidavit from the applicant's brother detailing his participation, and the participation of the applicant's sister, in the presidential campaign of their cousin. *See Affidavit of Peter Kihanya Muiruri*, dated August 4, 2003. The applicant's brother states that after their cousin lost the election, the winning National Rainbow Coalition retaliated against them for their involvement in the campaign and charged them with conspiracy to defraud monies advanced to them. *Id.* As of the date of the writing of the applicant's brother, those charges were still pending. *Id.* Counsel provides several newspaper articles discussing the charges in support of these assertions. Counsel further provides a letter written by the applicant reiterating that the charges against her siblings are unfounded and asserting that since her family is known as a result of their political activism, she and her husband would be unable to obtain employment in Kenya. *Letter from Lucy Kihanya-McCoy*, dated August 3, 2003.

The AAO acknowledges that the applicant and her spouse may have difficulty obtaining employment in Kenya as a result of the political affiliation of the applicant's family. The AAO notes, however, that the record fails to establish hardship to the applicant's spouse if he remains in the United States maintaining his employment. Although the applicant states that her spouse will be unable to cover their expenses in the absence of her income, the record fails to establish the couple's respective incomes and therefore renders the AAO unable to make a determination of extreme financial hardship. The AAO notes that the previous decision of the AAO addressed the inadequacy of the evidence in relation to the applicant's claim of financial hardship. The applicant fails to establish that the prior decision of the AAO was based on an incorrect application of law or CIS policy.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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 previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is granted. The decision of July 17, 2003 dismissing the appeal is affirmed.