U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

H2

[redacted]

FILE: [redacted] Office: BALTIMORE Date: MAY 19 2009

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application will be declared moot.

The record reflects that the applicant is a native and citizen of Sierra Leone and the beneficiary of an approved Form I-130 petition. The applicant was found 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). The record reflects that the applicant claims to be the spouse of a U.S. citizen and is the mother of a U.S. citizen son. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and son.

The district director found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse and denied the application.

On appeal, counsel contended that the evidence submitted demonstrates that denying the waiver application would occasion extreme hardship to the applicant's spouse. Counsel asserted that Sierra Leone is demonstrably dangerous and unhealthy and that the fraud alleged is minor. Counsel also stated that additional evidence would be submitted within 30 days. No further evidence, argument, or documentation was received.

Although counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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.

In *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961), the Board of Immigration Appeals defined the elements of a material misrepresentation, as follows:

> A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:
>
> 1. the alien is excludable on the true facts, or
> 2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well resulted in proper determination that he be excluded.

9 I&N Dec. at 448-449. Based on this standard, the applicant's misrepresentations were not material.

The Form I-130 petition in this case states that the applicant was previously married to [redacted] that the marriage ended on April 12, 1990, and that the applicant married her present husband, [redacted] on May 10, 2002. In support of that petition, the applicant submitted a marriage certificate showing that she married [redacted] her present husband, on May 10, 2002 in Upper Marlboro, Maryland.

The applicant also submitted what purports to be a Decree Absolute of divorce issued by the Master & Registrar of the High Court of Sierra Leone (Divorce Jurisdiction). That document states that the applicant married [redacted] on April 21, 1985, and that pursuant to a decree of June 10, 1989 that marriage was dissolved.

The record contains a letter, dated August 12, 2004, from a Senior Forensic Documents Examiner of the U.S. Department of Homeland Security, Immigration and Customs Enforcement. That letter notes that portions of the divorce decree the applicant provided have been altered. More specifically, dates have been altered and the names of the applicant and [redacted] have been added in a typeface different from that on the remainder of the document, and therefore apparently on a different typewriter. Further, the purported signature of the Master & Registrar was overwritten.

On September 6, 2004, the district director issued a notice of intent to deny the applicant's Form I-130 application. The district director informed the applicant that her divorce decree was found to have been altered from its original form and was therefore found to be fraudulent, that she was therefore inadmissible, and that USCIS intended to deny her application.

In response, and to support the authenticity of the divorce decree, the applicant submitted (1) a document that purports to be the death certificate of her ex-husband; (2) an affidavit, dated September 10, 2004, which purports to be from the applicant's ex-husband's mother; (3) an affidavit, dated September 8, 2004, which purports to be from the applicant's ex-husband's widow; (4) an affidavit, dated September 2004, from the applicant's father, and (5) an affidavit, dated October 5, 2004, from the applicant.

The document that purports to be the applicant's ex-husband's death certificate states that he died on January 10, 2001. That document also shows that it was issued on September 27, 2004. The applicant's ex-husband's mother stated that her son and the applicant divorced in 1990, that her son, the applicant's ex-husband, remarried in 1995, and that he died on January 10, 2001. The applicant's ex-husband's widow's affidavit states that the applicant's ex-husband died on January 10, 2001. The applicant's father stated, in his affidavit, that the High Court of Sierra Leone granted the applicant a divorce on April 12, 1990, dissolving her marriage to [redacted]

In her own affidavit, the applicant stated that she filed for divorce from during 1989 and the divorce became final in 1990, but that she left for the United States without a copy of the decree. She further stated that she asked her sister to send her the decree, and that her sister sent it during 2000. She stated that the decree reflected the facts as she knew them, and she submitted it to USCIS as she received it, without altering it.

Subsequently, USCIS subjected the authenticity of the applicant's divorce decree to further scrutiny. The record contains a memorandum from the master and registrar of the High Court in Freetown, Sierra Leone. That memorandum, dated August 17, 2005, states that the divorce decree provided by the applicant is "counterfeit or fake."

Nevertheless, the Form I-130 was approved on September 18, 2006. Approval of that petition necessarily rests on the finding that the applicant is validly married to the petitioner, [redacted] Approval of the Form I-130 demonstrates that, in spite of the applicant's submission of the fraudulent divorce decree, USCIS found that her marriage to [redacted] was valid.

The death certificate submitted states that the applicant's previous husband died on January 10, 2001. There is no indication that this fact has been disputed or that the authenticity of this document has been questioned. If the applicant was free, as a result of her husband's death, to marry, then her submission of the fraudulent divorce decree did not constitute a material misrepresentation.

As stated above, although the district director issued a notice of intent to deny the Form I-130 on September 6, 2004, based on evidence that the divorce decree was fraudulent, that petition was subsequently approved on September 18, 2006, and remains approved. Therefore the submission of the fraudulent divorce degree does not, under the circumstances, constitute a fraud or material misrepresentation within the meaning of section 212(a)(6)(C)(i) of the Act.

Based on the record, the AAO finds that the applicant did not misrepresent a material fact to procure a visa, other documentation, admission into the United States, or any other benefit provided under the Act, and that she is not inadmissible under section 212(a)(6)(C) of the Act. The waiver application filed pursuant to section 212(i) of the Act is therefore moot.

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 is not inadmissible and is therefore not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

ORDER: The applicant's waiver application is declared moot and the appeal is dismissed. The director shall reopen the denial of the Form I-485 application on motion and continue to process the application.