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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

H2

[Redacted]

FILE:

[Redacted]

Office: BALTIMORE, MD

Date: DEC 11 2007

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:

[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, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the record does not establish that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and the relevant waiver application is therefore moot.

The applicant is a native and citizen of Ethiopia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring a visa and admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and 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.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, dated March 4, 2006. The applicant's motion to reopen was denied on June 27, 2006.

On appeal, counsel asserts that the applicant's misrepresentation was not material and that the applicant's spouse would suffer extreme hardship. *Brief in Support of Appeal*, at 1, 11, dated August 17, 2006.

The record includes, but is not limited to, counsel's brief, statements from the applicant's spouse, statements from the applicant, a statement from a friend of the applicant, a psychological evaluation of the applicant and country conditions information on Ethiopia. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant obtained a B1 visa under an assumed name (Semira Mohammed Seid) on June 14, 2000, and she entered the United States with this visa on June 29, 2000. As a result of these misrepresentations, the applicant was found inadmissible under section 212(a)(6)(C) of the Act

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.

Counsel asserts that the applicant did not make a material representation. *Brief in Support of Appeal*, at 11. Counsel cites *Matter of Gilikevorkian*, 14 I&N Dec. 454 (BIA 1973), in which the Board of Immigration Appeals (BIA) stated:

An alien's entry into the United States as a nonimmigrant under a false identity did not constitute a material misrepresentation within the meaning of section 212(a)(19) of the Immigration and Nationality Act where he had adopted the false identity for a legitimate reason (to obtain employment) and had used it for a prolonged period of time prior to his entry into this country.

The cases have distinguished between a false identity used to facilitate entry into the United States and one used for other reasons. In *Matter of Sarkissian*, supra, on which the immigration judge relied, there was no indication that the alien used the false identity for any purpose other than to obtain a visa to enter the United States. Where a person uses a false identity long before, and for reasons unrelated to, obtaining admission to the United States, and over a long period of time, misrepresentation as to identity made when applying to enter the United States has been held not to be material, *U.S. ex rel. Leibowitz v. Schlotfeldt*, 94 F.2d 263 (C.A. 7, 1938)

The Attorney General has established the test that a misrepresentation is material if (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which might have resulted in a decision to exclude the alien, *Matter of S-- and B- - C--*, 9 I.&N. Dec 436 (BIA 1961). Inasmuch as the respondent's use of the false identity was for a legitimate reason and was for a prolonged period prior to entry, a line of relevant inquiry was not cut off. Inquiry would have revealed no information damaging to the respondent so as this record indicates. No ground of excludability would have been uncovered. (Citations omitted).

Counsel states that the applicant had adopted the name Semira Mohammed Seid while abroad, was known by that name, used the name during the time that she was in Saudi Arabia and is still known by that name to the friends she made in Saudi Arabia. *Brief in Support of Appeal*, at 11.

The applicant states that she left for Saudi Arabia on March 12, 1999, she had to change her Christian name to a Muslim name in order to enter Saudi Arabia, she was employed as a housekeeper in Saudi Arabia and her employer sent her to the United States in June 2000 to take care of his children. *Applicant's Statement*, at 2-3, undated. The applicant states, and the record confirms, that she received a U.S. visa under her assumed name on June 14, 2000. *Applicant's Second Statement*, at 3, dated August 11, 2004. She was admitted to the United States on June 29, 2000. A friend of the applicant, who is a U.S. citizen, states that he met the applicant in Saudi Arabia, he knew her as Semira and she remained a friend of his after coming to the United States. *Statement from [REDACTED]* at 1, dated, November 14, 2005.

The first issue in regard to the materiality of the applicant's misrepresentations is whether she used a false identity long before, and for reasons unrelated to, obtaining admission to the United States, and whether the use was over a long period of time. The record evidences these criteria in that the applicant obtained a false identity for purposes of entering Saudi Arabia, used the identity for approximately fifteen months before receiving a U.S. visa and has substantiated that she was known by a U.S. citizen under the assumed name while in Saudi Arabia.

The second issue is whether a ground of inadmissibility would have been revealed if the applicant's visa and passport reflected the true facts or if an inquiry on the basis of the true facts would have resulted in a proper determination of excludability (inadmissibility). The record reflects that the applicant was employed as a housekeeper in Saudi Arabia and she obtained a B1 visa in order to work for her employer in the United States. There is no indication that using her true name would have revealed a ground of inadmissibility or

that use of her false identity shut off a line of inquiry which would have resulted in a finding of inadmissibility.

Based on the record, the AAO finds that the applicant, in seeking nonimmigrant admission to the United States under another identity, did not commit fraud or misrepresent a material fact for immigration purposes and 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 required to file the waiver. Accordingly, the appeal will be dismissed as moot.

**ORDER:** The appeal is dismissed as moot.