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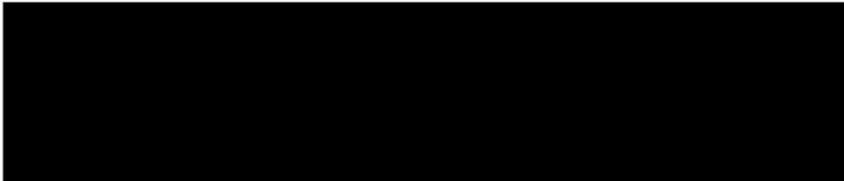
FILE: [REDACTED] Office: BALTIMORE, MARYLAND

Date: **OCT 03 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Sierra Leone who initially entered the United States on February 14, 1992, on a B-2 nonimmigrant visa with authorization to remain in the United States until August 13, 1992. On May 11, 1992, the applicant filed a Request for Asylum in the United States (Form I-589). On October 19, 1995, the applicant's Form I-589 was referred to an immigration judge, and an Order to Show Cause (OSC) was issued against the applicant. On March 18, 1996, an immigration judge denied the applicant asylum but granted the applicant voluntary departure until September 18, 1996. On March 25, 1996, the applicant filed an appeal of the immigration judge's decision to the Board of Immigration Appeals (Board). On February 18, 1997, the applicant's United States citizen wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On April 11, 1997, the Board summarily dismissed the applicant's appeal and ordered the applicant to voluntarily depart the United States within thirty days. The applicant failed to depart the United States as ordered. On August 5, 1997, the District Director denied the applicant's Form I-130 for abandonment. On November 25, 1997, the applicant filed an Application for Temporary Protected Status (Form I-821), which was approved on November 26, 1997. On March 6, 1998, a Warrant of Removal/Deportation (Form I-205) was issued. On November 20, 1998, the applicant filed a Form I-821, which was approved on November 23, 1998. On December 25, 1998, the applicant's Form I-130 was approved. On January 31, 2002, the applicant filed a Petition for Amerasian, Widow or Special Immigrant (Form I-360), based on the death of his United States citizen wife. On May 23, 2002, the applicant's Form I-360 was approved.

On June 28, 2004, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). On May 19, 2005, the Center Director, Vermont Service Center, denied the applicant's Form I-212. On June 24, 2005, the applicant, through counsel, filed a motion to reopen the Center Director's decision. On September 6, 2005, the Center Director, Vermont Service Center, dismissed the applicant's motion to reopen. On September 19, 2005, the applicant, through counsel, filed a motion to reconsider which the Acting Center Director, Vermont Service Center dismissed on November 30, 2005. On January 3, 2006, the applicant filed a second Form I-212. On September 27, 2007, the District Director, Baltimore, Maryland determined that the applicant is inadmissible pursuant to section 212(a)(9)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A), for being ordered removed from the United States, that the unfavorable factors in the applicant's case outweighed the favorable factors, and he denied the applicant's Form I-212 accordingly. *District Director's Decision*, dated September 27, 2007.

The AAO finds that the applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I). The applicant now seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

. . . .

(ii) Other aliens.- Any alien not described in clause (i) who-

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, the applicant, through counsel, asserts that the applicant did not overstay his voluntary departure. *See Form I-290B*, filed October 16, 2007. The AAO notes that the Board summarily dismissed the applicant's appeal on April 11, 1997, and ordered the applicant to depart the United States within thirty days; however, the applicant failed to depart the United States as ordered. Counsel claims that the applicant could not return to Sierra Leone because of the armed conflict; however, the applicant designated Gambia as the country he wanted to be returned to, not Sierra Leone. *See Oral Decision of the Immigration Judge*, dated March 18, 1996. Counsel claims that the applicant "has not worked beyond his authorization because he was permitted [sic] to do so by his TPS." *Form I-290B, supra*. The AAO notes that the applicant was granted authorization to work in the United States from July 20, 1992 until November 3, 1999; therefore, since November 3, 1999, the applicant has been working without authorization and that is an unfavorable factor. Additionally, the applicant has been residing in the United States without authorization and that is an unfavorable factor. Counsel asserts that the District Director erred in finding the applicant's failure to appear for his Form I-130 interview to be an unfavorable factor. The AAO notes that counsel submitted documents establishing that he requested that the interview be rescheduled. Additionally, the AAO notes that the applicant's Form I-130 was approved. Regarding the applicant's United States citizen son, counsel claims that the applicant should have an opportunity to provide DNA evidence to prove their relationship. *Id.* The AAO notes that the applicant

never listed \_\_\_\_\_ as his son in any previously filed applications, including his Form I-130 and Form I-589. Additionally, counsel could have submitted the DNA evidence on appeal and did not.

The record of proceeding reveals that on March 18, 1996, an immigration judge granted the applicant voluntary departure. The applicant filed an appeal with the Board, and on April 11, 1997, the Board dismissed the applicant's appeal, and ordered the applicant to depart the United States within thirty days. The applicant failed to depart the United States as ordered. Based on the applicant's previous order of removal, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work unlawfully. *Id.*

The favorable factors in this matter are the applicant's family ties to a lawful permanent resident, his son, general hardship he may experience, an approved I-360 petition and no criminal record.

The AAO finds that the unfavorable factors in this case include the applicant's failure to abide by the terms of his initial admission into the United States, his failure to comply with an order of removal, and periods of unauthorized employment and presence.

The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.