



**U.S. Citizenship
and Immigration
Services**

(b)(6)

[Redacted]

DATE: **MAR 26 2013**

Office: ACCRA, GHANA

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office:

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana, 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 was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States, and 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 sought to procure admission to the United States through fraud or misrepresentation. The applicant does not contest these findings of inadmissibility on appeal. He seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to reside in the United States with his U.S. citizen spouse and child.

The Field Office Director concluded that in addition to being inadmissible pursuant to sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act, the applicant was also ineligible for all benefits under the Act because he knowingly filed a frivolous asylum application. The Director therefore found that the applicant was permanently ineligible for a waiver and denied the application accordingly. *See Decision of Field Office Director*, dated February 21, 2012.

The record also shows that the applicant has been convicted of trademark counterfeiting and copying recording devices in violation of sections 4119 and 4116, respectively, of Title 18 of the Pennsylvania Consolidated Statutes and was found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act by the Field Office Director. The applicant has not disputed this finding on appeal. Because the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not review the determination of the applicant's inadmissibility under section 212(a)(2)(A)(i)(I).

On appeal, counsel for the applicant asserts that the Field Office Director failed to consider the hardship the qualifying spouse has experienced and would continue to experience if the waiver application were denied. Counsel notes that if the qualifying spouse were to relocate to Sierra Leone, she would be separated from her eldest son, [REDACTED], because [REDACTED] father will not allow her to take [REDACTED] out of the United States. Counsel also states that the qualifying spouse has experienced severe financial hardship in the applicant's absence and that the applicant cannot support himself or his family due to high unemployment rates in Sierra Leone. Counsel also alleges that the Field Office Director relied on boilerplate language rather than engaging in an individualized analysis of the qualifying spouse's situation. Finally, counsel contends that the applicant is not ineligible for benefits under the Act for filing a frivolous asylum application because he withdrew his application prior to receiving the warnings related to filing a frivolous application.

The evidence of record includes, but is not limited to: country conditions information; a statement from the qualifying spouse; financial records; a letter from the father of the qualifying spouse's eldest son; and immigration court records. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 208(d) of the Act states, in pertinent part:

(4) Notice of privilege of counsel and consequences of frivolous application. - At the time of filing an application for asylum, the Secretary shall -

(A) advise the alien of the privilege of being represented by counsel and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and

(B) provide the alien a list of persons (updated not less often than quarterly) who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis.

(6) Frivolous application - If the Secretary determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

The regulation at 8 C.F.R. § 208.20 provides:

For applications filed on or after April 1, 1997, an applicant is subject to the provisions of section 208(d)(6) of the Act only if a final order by an immigration judge or the Board of Immigration Appeals specifically finds that the alien knowingly filed a frivolous asylum application. For purposes of this section, an asylum application is frivolous if any of its material elements is deliberately fabricated. Such finding shall only be made if the immigration judge or the Board is satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to account for any discrepancies or implausible aspects of the claim. For purposes of this section, a finding that an alien filed a frivolous asylum application shall not preclude the alien from seeking withholding of removal.

The record reflects that the applicant entered the United States in 1997 or 1998. On July 22, 1998, he was arrested in Pennsylvania for illegally copying recording devices. On December 28, 1998, he filed an application for asylum with the New York Asylum Office. He stated in his application that he had entered the United States without inspection on October 20, 1997. He

later failed to appear for his asylum interview and his case was referred to the immigration court. On May 12, 1999, an immigration judge ordered the applicant removed in absentia.

In the meantime, the applicant had filed a second asylum application on February 9, 1999 with the Newark Asylum Office, on which he stated that he had entered the United States on January 20, 1999. The factual assertions in the applicant's second asylum application also differed significantly from those in his first application. Following an interview, the asylum office recommended approval of the application, conditioned on a background investigation. However, the asylum office then discovered the applicant's arrest history. In notices dated March 23, 2000 and September 6, 2001, the asylum office requested that the applicant submit documentation of the disposition of his criminal case within 60 days. The applicant failed to respond to the requests and the recommendation that his asylum application be granted was therefore cancelled. On January 10, 2002, the applicant was again arrested in Pennsylvania and on June 21, 2002 he was convicted of trademark counterfeiting and copying recording devices. He was placed into removal proceedings and on July 16, 2003, an immigration judge found that the applicant had filed a frivolous asylum application. Following that finding, the applicant withdrew his application and the immigration judge ordered him removed.

The AAO finds that the applicant is permanently ineligible for all benefits under the Act because an immigration judge found that he knowingly filed a frivolous asylum application. *See* section 208(d)(6) of the Act; 8 U.S.C. § 1158(d)(6). Counsel for the applicant alleges that the applicant withdrew his asylum application prior to being warned of the consequences of filing a frivolous application and that he therefore is not subject to the bar. However, the order of the immigration judge, dated July 16, 2003, states that the application was "withdrawn after [the] court made [a] frivolous finding on [the] claim." Additionally, the applicant twice signed Form I-589, which states, "Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act." In addition, on May 9, 2003, the applicant was notified by personal service of the privilege of counsel. Therefore, the evidence does not support counsel's assertion that the applicant was not warned of the consequences of filing a frivolous asylum application or that he withdrew his application prior to a finding that it was frivolous. Accordingly, the AAO finds that the applicant is permanently barred from all benefits under the Act. There is no waiver available, even for humanitarian reasons, due to the applicant's ineligibility pursuant to section 208(d)(6) of the Act. Consequently, the Field Office Director's decision to deny the application will be affirmed.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.