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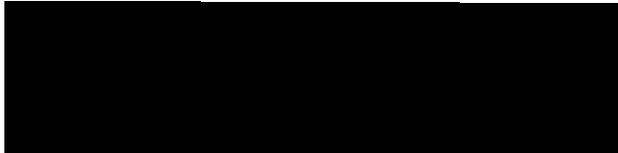
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DEC 15 2008

IN RE: Applicant: [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:



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).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The 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. *Decision of the Director*, dated April 26, 2006.

On appeal, counsel for the applicant contends that the applicant's husband will suffer hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated May 24, 2006.

The record contains a brief from counsel in support of the appeal: an evaluation of the applicant's husband by a licensed clinical psychologist; copies of correspondence between the applicant and his wife; copies of bills, bank statements, and rent receipts for the applicant and his wife; a copy of the applicant's marriage certificate, and copies of birth records for the applicant and her husband. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides that:

- (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.

The record reflects that on or about July 1999 the applicant entered the United States using a passport bearing an identity other than her own. Thus, the applicant entered the United States by fraud, and made a willful misrepresentation of a material fact (her identity.) Accordingly, 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). The applicant does not contest her inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's husband would possibly remain in the United States if the applicant departs. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

On appeal, counsel contends that the applicant's husband will suffer hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated May 24, 2006. Counsel primarily discusses an evaluation of the applicant's husband conducted by a licensed clinical psychologist, ██████████. *Id.* at 1. Counsel explains that ██████████ diagnosed the applicant's husband as a substance addict. *Id.* at 4. Counsel notes that ██████████ indicated that the applicant is an important part of the applicant's husband's recovery from chemical addiction. *Id.* Counsel explains that ██████████ found that the applicant's husband may have adjustment difficulties when he is released from prison if the applicant is not available for him. *Id.* at 5. Counsel asserts that the applicant's husband's chemical dependency should be considered a health problem that contributes to his hardship should the applicant be prohibited from remaining in the United States. *Id.* at 6.

described the applicant's husband's background, and noted that he and the applicant were married in Jamaica on February 28, 1999. *Report from* , dated May 7, 2005. Dr. explained that the applicant's husband stayed in Jamaica with the applicant for five months and then came to the United States. *Id.* at 2. She stated that the applicant's husband was arrested in April 2002, yet he did not notify the applicant. *Id.* She explained that the applicant learned of her husband's arrest on the internet. *Id.* stated that the applicant's husband's chemical dependency has led to multiple arrests and several terms of incarceration. *Id.* at 5. She indicated that the applicant's husband has a strong attachment to the applicant and her three children, and that he wishes to maintain sobriety upon his release from prison so he can be a good father and husband. *Id.* She expressed the opinion that the applicant's husband's prognosis for long term abstinence would be considerably hindered if his family were not present. *Id.*

In an addendum to her report, noted that the applicant became accustomed to her husband "disappearing" for prolonged periods of time. *Addendum from* , dated May 7, 2005. She stated that the applicant "appeared rather confused regarding the status of [her and her husband's] marriage and future plans." *Id.* at 1.

provided a supplemental report in response to the director's denial of the present waiver application. In the supplemental report, stated that the applicant's husband suffers from chemical dependency and Major Depressive Disorder. *Supplemental Report from* , dated May 13, 2006. She explained that the applicant's presence and support will be important for the applicant's husband's recovery and adjustment once he is released from prison. *Id.* at 3.

Upon review, the applicant has not established that her husband will experience extreme hardship if she is prohibited from remaining in the United States. The applicant has provided documentation and explanation to show that her husband suffers from chemical addiction, and that he is presently incarcerated for a related offense. Counsel contends that the report from establishes that the applicant's husband relies on the applicant, or will rely on the applicant once he is released from prison, to help him adjust and recover from addiction. However, the applicant has not established that her husband presently depends on her presence in the United States.

The applicant's husband is incarcerated. The applicant corresponds with her husband from the United States by mail, and she has not shown that she would be unable to continue to do so from Jamaica. The applicant has not indicated that she visits her husband in prison, thus she has not shown that her departure would interrupt such visits. The record suggests that the applicant provides her husband with some economic support, yet the applicant has not shown that her husband requires financial resources while he is incarcerated, or that she would be unable to continue to provide such support from Jamaica. As the applicant and her husband do not reside with each other while he is incarcerated, it is evident that her departure would not result in present family separation. Thus, the applicant has not established that her husband would suffer extreme hardship at the present time should she depart the United States.

The report from asserts that the applicant will be important for her husband's recovery from addiction. However, the applicant has not shown that denial of the present waiver application will result in family separation. Specifically, the applicant has not asserted or established that her

husband is unable to relocate to Jamaica upon his release to maintain family unity. The record reflects that the applicant's husband resided in Jamaica for five months after their marriage. The applicant has presented no evidence or explanation to show that her husband experienced hardship while residing in Jamaica. She has not described the circumstances of her husband's experience there, or whether he would endure hardship should he return to be with her. As the applicant's husband is not presently employed, it is evident that he would not be compelled to relinquish employment to move abroad. The applicant has not described any instances of hardship her husband would encounter in Jamaica. Accordingly, the applicant has not shown that her husband would experience extreme hardship should he relocate abroad to maintain family unity.

contends that the applicant's husband requires the applicant's presence to assist in his recovery from addiction and adjustment back into society. The AAO has examined the reports from [REDACTED] carefully and given due weight to her opinion. It is evident that the applicant and her children could be of benefit to the applicant's husband in offering support and encouragement for his recovery. However, as the applicant's husband is presently incarcerated, any description of events upon his release are speculative. [REDACTED] indicated that she examined the applicant's husband during a three-hour session. She did not state that she is treating the applicant's husband on a regular basis, or that he is undergoing regular treatment for chemical dependency while in prison. [REDACTED]'s analysis of events that are likely to occur when the applicant's husband is released from prison is not sufficient to show that the applicant will become an important part of the applicant's husband's recovery. It is noted that the applicant has not provided a clear statement from her husband in which he expresses his intent upon his release. Given the applicant's husband's prior lengthy, voluntary absences from her, the AAO is unable to conclude that her husband will choose differently upon his release from prison. Accordingly, the AAO lacks sufficient documentation to show that the applicant's husband will experience extreme hardship should he be released from prison and remain in the United States without the applicant.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that the instances of hardship that will be experienced by her husband should the applicant be prohibited from remaining in the United States, considered in the aggregate, rise to the level of extreme hardship. The record contains speculation that the applicant's husband may experience difficulty once he is released from prison if the applicant is not in the United States, yet the applicant has not shown that denial of the present application "*would* result in extreme hardship" to her husband. Section 212(i)(1) of the Act (emphasis added). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.