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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: ATLANTA, GEORGIA

Date:

DEC 23 2008

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).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Burkina Faso who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated August 11, 2006.

On appeal, counsel contends that the applicant does not require a waiver of inadmissibility because he is eligible to adjust his status under the Legal Immigration Family Equity Act and Amendments ("LIFE Act"). *Supplement to Form I-290B*, dated September 1, 2006.

The AAO concludes that a waiver of inadmissibility was required because the applicant entered the United States using a fraudulent passport. The AAO further finds that the district director properly evaluated and denied the applicant's waiver application.

The record contains, *inter alia*, a copy of the marriage license of the applicant and his wife, Mrs. [REDACTED] indicating they were married on April 27, 2001; an affidavit from [REDACTED] a Certificate for Return to School/Work for [REDACTED] a copy of a business license indicating that the applicant is the owner of [REDACTED] conviction documents indicating that the applicant, using the name of [REDACTED] pled guilty to one count of theft by receiving stolen property in violation of Georgia Statute section 16-8-7 in the Superior Court for the County of Cobb, Georgia, on February 10, 2005, and was placed on five years probation; and a copy of the applicant's approved I-130 petition.

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.

Section 212(i) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien.

The record shows, and the applicant admits, that he entered the United States on March 4, 1998, using a fraudulent name, [REDACTED] and fraudulent passport. *Supplement to Form I-290B, supra; Application for Waiver of Grounds of Inadmissibility (Form I-601)*. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 182(a)(6)(C)(i), for having entered the United States by fraud or willful misrepresentation. Although counsel is correct in stating that the LIFE Act waives inadmissibility based on entering the United States without inspection, *see* section 245(i)(1)(A) of the Act, 8 U.S.C. § 1255(i)(1)(A), in the instant case, the applicant did not enter without inspection. Rather, here, the applicant entered using a fraudulent passport. The LIFE Act does not waive inadmissibility based on fraud, a different and separate ground of inadmissibility from entry without inspection. *See* section 245(i)(1)(A) of the Act, 8 U.S.C. § 1255(i)(1)(A); *compare* section 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A) (entry without inspection) *with* section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C) (fraud or willful misrepresentation).<sup>1</sup>

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

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<sup>1</sup> The AAO notes that the applicant may also be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude based on his guilty plea for theft by receiving stolen property in violation of Georgia Statute § 16-8-7. However, there is insufficient information in the record to determine whether this conviction qualifies under the petty offense exception set forth in section 212(a)(2)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii). There is no information in the record indicating whether the applicant was convicted of a misdemeanor or a felony and, therefore, it is unknown whether the maximum penalty possible was more than one year. *See* Ga. Code Ann. § 16-8-12(a) (stating that a person convicted of Georgia Statute § 16-8-7 shall be punished for a misdemeanor and listing several exceptions for when a person may be punished for a felony); Ga. Code Ann. § 17-10-3 (stating that a person convicted of a misdemeanor may not be sentenced to confinement for more than one year). Accordingly, this decision is based only on the applicant's inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by fraud or willful misrepresentation.

lawfully resident spouse or parent of the applicant. See section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). Hardship the alien himself experiences upon deportation is not a permissible consideration under the statute. *Id.* Therefore, the only relevant hardship in the present case is hardship suffered by the applicant's wife, [REDACTED]. 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 Bureau 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.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

According to [REDACTED] affidavit, she states in a single sentence that she has endometriosis "which requires [her] husband to assist in all family matters at least five to seven days each month." *Affidavit of* [REDACTED] dated April 10, 2006. There is insufficient evidence in the record to show that [REDACTED] would suffer extreme hardship based on this health condition. The only document in the record that addresses [REDACTED] health is an undated Certificate for Return to School/Work which indicates that [REDACTED] may return to school or work on January 2, 2006 with "[n]o limitations or restrictions." *Certificate for Return to School/Work*, undated. This certificate does not reference [REDACTED] endometriosis, nor does it give any indication that she has any medical conditions whatsoever. [REDACTED] assertion in her affidavit that she requires her husband's assistance five to seven days each month does not give any details regarding her condition, how it impacts her, or how her husband assists her. There is no evidence describing the extent or seriousness of [REDACTED] endometriosis, what treatment may entail, or what the prognosis may be. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed. Going on record without supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, [REDACTED] states that she assists her husband with the family business and that "his removal would disrupt our family unity." *Affidavit of* [REDACTED] *supra*. There is insufficient evidence in the record to show extreme financial or emotional hardship. The only financial documents in the record consist of a joint tax return for 2005, a copy of [REDACTED] W-2 form from [REDACTED] indicating her wages for the year 2005 were \$624.33, and a letter from Turbo

Tires and Wheels stating that [REDACTED] works full-time as a Secretary earning \$7.00 per hour. Letter from [REDACTED] dated July 2, 2005. There is no information in the record regarding the family's expenses, such as documentation of rent or mortgage. Based on this limited information, at best, it is unclear that [REDACTED] would suffer financial hardship if her husband's waiver request were denied. In any event, even assuming financial hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. See also *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

[REDACTED] does not discuss the possibility of moving to Burkina Faso with her husband to avoid the hardship of separation, and she does not address whether such a move would represent a hardship to her. There is no evidence in the record addressing the economic or social conditions in Burkina Faso, and no evidence [REDACTED] could not obtain employment in Burkina Faso. The AAO notes that although [REDACTED] will endure hardship as a result of separation from the applicant, her situation, if she continues to remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. See also *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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, 8 U.S.C. § 1182(a)(6)(C), 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.