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U.S. Citizenship  
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FILE:

Office: MIAMI, FLORIDA

Date: DEC 24 2008

IN RE:



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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

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

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having entered the United States by fraud or willful misrepresentation. The applicant is married to a naturalized 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 her husband 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 23, 2006.

On appeal, counsel contends that the district director erred in concluding that the applicant failed to establish extreme hardship.

The record contains, *inter alia*: a copy of the marriage license of the applicant and her husband, Mr. [REDACTED] stating that they were married on February 14, 2005; a copy of the applicant's divorce decree from a previous marriage stating she was divorced on October 19, 2004; an affidavit from a letter from [REDACTED] physician; numerous internet articles and background materials about Haiti; letters verifying the applicant's and [REDACTED] employment; and financial and tax documents. The entire record was reviewed and considered in rendering this decision.

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 she attempted to enter the United States on March 11, 2003, using a fraudulent French passport with the name [REDACTED] for which she paid \$1,000. *Record of Sworn Statement in Administrative Proceeding*, dated March 11, 2003. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as one who, by fraud or willfully misrepresenting a material fact, seeks to procure admission into the United States.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), 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. *See* section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). Hardship the applicant herself may experience upon deportation is not a permissible consideration under the statute. *Id.* 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 under 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.

In this case, the applicant's spouse, [REDACTED] contends he would suffer extreme hardship if his wife's waiver application is denied because he truly loves her, and if she is sent back to Haiti, it would be difficult for him to ever see her again. *Affidavit of* [REDACTED] dated March 23, 2006. He states he has high blood pressure, requiring him to eat a "special diet, that only [his] wife can prepare." *Id.* He also states that his wife supports him and helps him emotionally. *Id.* [REDACTED] further contends that if he were to move to Haiti, he would not receive the proper medical attention for his high blood pressure. *Id.* A letter in the record from [REDACTED] doctor states, in its entirety:

[REDACTED] has been diagnosed with essential hypertension and polyarthritis. He is currently being tested for both conditions. If you have any further questions please [d]o not hesitate to contact our office.

*Letter from* [REDACTED] dated September 19, 2006.

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.

As an initial matter, the AAO notes that the applicant divorced her former husband and married [REDACTED] after she was already in immigration proceedings. Therefore, the weight given to any hardship [REDACTED] may experience, and the equity of their marriage, is diminished as they entered into the marriage with the knowledge that the applicant might be removed from the United States. See *Ghassan v. INS*, 972 F.2d 631, 634-35 (5<sup>th</sup> Cir. 1992) (finding it was proper to give diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation); *Garcia-Lopes v. INS*, 923 F.2d 72, 76 (7<sup>th</sup> Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9<sup>th</sup> Cir. 1980) (a "post-deportation equity" need not be accorded great weight).

There is insufficient evidence in the record to show that because of his high blood pressure, Mr. [REDACTED] would suffer extreme hardship if his wife's waiver application were denied. The letter from [REDACTED] doctor merely confirms that [REDACTED] has high blood pressure and polyarthritis. Letter from [REDACTED]. Although the doctor's letter states that his office may be contacted for additional information, [REDACTED] himself claims only that his high blood pressure requires him to eat a "special diet," one that purportedly only his wife could prepare. Affidavit of [REDACTED] *supra*. [REDACTED] does not elaborate or describe how his high blood pressure impacts his daily life, and, aside from food preparation, does not contend that he requires any assistance because of it. He does not state how long he has had high blood pressure, whether he was diagnosed before he met his wife, whether he takes any medication for it, or why only his wife could prepare his meals. 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.

The AAO recognizes that [REDACTED] will endure hardship as a result of the denial of his wife's waiver application and is sympathetic to the family's circumstances. However, if [REDACTED] decides to remain in the United States, their situation 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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).

In addition, there is insufficient evidence to show that [REDACTED] would experience extreme hardship if he moved back to Haiti, the country where he was born, with his wife to avoid the hardship of separation. Although the background information in the record describes an unstable

environment in Haiti and some of the articles address specific health care problems, such as AIDS and tuberculosis, *see, e.g., Letter from Haiti: Fighting for Survival*, none of the articles mention high blood pressure. Without more detailed information regarding the severity of Mr. [REDACTED] high blood pressure and the medical attention he may need, the AAO is not in the position to conclude that he would be unable to receive proper medical care in Haiti.

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 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, 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.