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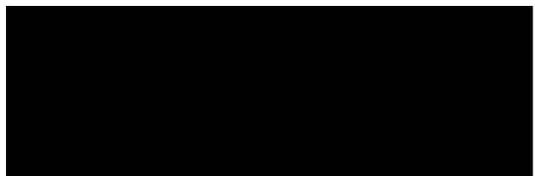
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [Redacted] Office: KINGSTON, JAMAICA Date: **DEC 19 2008**

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(6)(C)(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 Officer in Charge, Kingston, Jamaica. 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 Jamaica 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 having attempted to enter the United States by fraud or willful misrepresentation, and section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been previously removed from the United States. 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 his wife in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Officer in Charge*, dated August 24, 2006.

On appeal, counsel contends that the applicant's wife has suffered extreme hardship, and that the applicant's grandparents depend on him.

The AAO notes that the record contains only a Form I-601 waiver of inadmissibility for the misrepresentation or fraud, and does not contain an Application for Permission to Reapply for Admission Into the United States After Departure or Removal (Form I-212) for having been previously removed from the United States. Therefore, this decision pertains only to the denial of the applicant's Form I-601 waiver application.

The record contains, *inter alia*: a copy of the marriage register of the applicant and his wife, Ms. [REDACTED], indicating they were married on March 5, 2004; a letter from the applicant; a declaration from [REDACTED] copies of [REDACTED] student loans and transcripts; a letter from one of Ms. [REDACTED]'s professors; a letter from [REDACTED] psychiatrist; a letter from the applicant's grandparents' nurse; a letter from the college the applicant attended; and a copy of [REDACTED] naturalization certificate. The entire record was reviewed and considered in rendering this decision on the appeal.

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. . . .

In this case, the record shows, and the applicant admits, that on January 9, 2004, the applicant attempted to enter the United States using fraudulent Canadian documents and was returned to Jamaica. *Letter from* ██████████, dated August 28, 2006. Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for fraud or willfully misrepresenting a material fact in order to procure admission into the United States.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself may experience, or hardship the applicant's other relatives may experience, are not permissible considerations under the Act. 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 applicant 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.

The applicant contends that his wife would suffer extreme hardship if his waiver application is denied. To the extent counsel contends that the applicant's grandparents "were his defacto parents," *Notice of Appeal* at 3, dated September 20, 2006, there is no evidence in the record supporting this assertion. There is no letter in the record from either of the applicant's grandparents, nor does the applicant make any mention of his grandparents in his letter. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In any event, as explained above, the statute considers only the hardship on the citizen or lawfully permanent resident spouse or parent of the applicant. *See* section 212(i) of the Act, 8 U.S.C. § 1182(i); *see also* section 1101(b)(2) of the Act, 8 U.S.C. § 1101(b)(2) (defining "parent").

Accordingly, only hardship upon the applicant's wife, [REDACTED], will be considered.

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.

The record shows that [REDACTED] is a twenty-seven year old doctoral student in physical therapy at Columbia University. *Affidavit of* [REDACTED] dated August 29, 2005. [REDACTED] contends she cannot imagine her life without the applicant, that she needs him by her side, and that she would be "emotionally destroyed without him." *Id.* She states that if the applicant returned to the United States, he would help her pay for her school fees and living expenses. *Id.* She claims that if she were to go to Jamaica to live with him, her aspirations for a career in physical therapy would be ruined and she would be in over \$80,000 of debt from student loans, an amount she is unsure she could afford to repay by working in Jamaica. *Id.* The record also shows that [REDACTED] has been seeing a Psychiatrist and taking medication for depression. *Letter from* [REDACTED] dated September 20, 2006.

The AAO recognizes that [REDACTED] has endured hardship as a result of her separation from the applicant. However, the AAO notes that the applicant and [REDACTED] married on March 5, 2004, two months after the applicant attempted to enter the United States using fraudulent Canadian documents and was returned to Jamaica on January 9, 2004, and almost two years after the applicant left the United States in July 2002 and was denied re-entry. Therefore, the equity of their marriage and the weight given to any hardship [REDACTED] may experience is diminished as they married with the knowledge that the applicant might not be permitted to re-enter 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).

Furthermore, their situation, if [REDACTED] remains 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 (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).

Although [REDACTED] has been diagnosed with depression and takes an anti-depressant, is it unclear from the record when she was diagnosed or how long she has been seeing the Psychiatrist. *Letter from [REDACTED]*, *supra*. Significantly, [REDACTED] does not mention receiving treatment from a Psychiatrist in her affidavit, nor does she give any indication that she has any medical conditions whatsoever. *Affidavit of [REDACTED]*, *supra*. Although the input of any mental health professional is respected and valuable, 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.

To the extent [REDACTED] is uncertain she would be able to repay her student loans if she went to Jamaica to avoid the hardship of separation from her husband, there is no evidence in the record addressing the economic or social conditions in Jamaica, and no evidence [REDACTED] could not obtain employment, possibly even as a physical therapist, in Jamaica. 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 any event, even assuming some economic 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).

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, 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.