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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] (CDJ 2004 813 813)

Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ)

Date: NOV 04 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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).

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to 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 ten years of her last departure from the United States. The applicant's spouse is a U.S. citizen and she seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, at 4, dated September 14, 2006.

On appeal, counsel details the reasons why the applicant's spouse would experience extreme hardship. *Letter in Support of Appeal*, at 1-2, dated November 7, 2006.

The record includes, but is not limited to, counsel's letter; a psychological evaluation of the applicant's spouse, the applicant spouse's statements; and statements from the applicant's former employer, pastors, father and former physician. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in April 1999 and departed the United States in October 2005. The applicant accrued unlawful presence during this period of time. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of her October 2005 departure from the United States.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) 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 to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative. 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in Mexico or in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Mexico. The applicant's spouse's former physician states that he initially diagnosed the applicant's spouse with attention deficit hyperactivity disorder in 1971 when he was ten years old, that he followed him for many years and that his last medical contact with him was in 1997. *Letter from* [redacted], dated October 11, 2006. The applicant's spouse was interviewed on October 31, 2006 by a licensed professional counselor who states that relocation would require the applicant's spouse to leave behind his support system, (father, stepmother, siblings and friends), he might experience a high level of anxiety and depression in Mexico because he does not speak Spanish, he would be unlikely to find employment or establish friendships there because he lacks the ability to speak Spanish, his severe attention deficit disorder could contribute to further psychological deterioration and a greater degree of depression, and he has never lived outside of North Carolina and moving to Mexico could be potentially traumatizing. *Psychological Evaluation*, at 2, dated November 6, 2006. The counselor states that on the Beck Depression Inventory-II the applicant's spouse scored in the severe range of depression and his score on the Homes-Rahe Inventory implies a fifty-percent chance of a major health breakdown in the next two years, and it is critical to minimize the level of stress in his life. *Id.* The counselor states that relocation would likely have deleterious effects on the applicant's spouse's emotional and physical functioning, and could potentially trigger a relapse of his depression, attention deficit disorder, and prior drug and alcohol abuse. *Id.* at 4.

Although the input of any mental health professional is respected and valuable, the AAO notes that the licensed professional counselor who interviewed and tested the applicant's spouse offers his findings about the impact of relocation largely in tentative terms, thereby significantly diminishing

their value to a determination of extreme hardship. However, the AAO notes that the applicant's spouse suffers from attention deficit disorder, has never resided outside the state of North Carolina and does not speak Spanish. When considered in light of these additional circumstances, it finds that the normal disruptions and upheavals created by relocating to a new country would result in extreme hardship for the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant is essential to her spouse's well-being and she provides the stability and nurturing relationship that he has come to depend on during their marriage. *Letter in Support of Appeal*, at 1. The applicant's spouse states that the applicant is his soul mate, she brings order to his chaos, he will regress back to a terrible state without her, his family and friends have seen the incredible change that she has brought to his life, he was diagnosed with attention deficit hyperactivity disorder as a child, his disease has gotten worse as an adult, he lived a life of disorder with a constant pattern of missed opportunity and lost potential before he met the applicant, he was very depressed and extremely unhappy, he tried all of the medicines for his condition but could not bear the side effects, he has found the only circumstances that have worked for him to control his disorder without drugs, he will be in dire straights without the applicant, and he will return to chaos and depression without her. *Applicant's Spouse's Statement*, dated November 9, 2005.

The applicant's spouse's former physician states that he initially diagnosed the applicant's spouse with attention deficit hyperactivity disorder in 1971, he followed him for many years, he had an excellent initial response to the usual stimulant drugs but would often stop taking his medications and relapse, and his last medical contact with him was in 1997. *Letter from* [redacted]

The applicant's spouse's father states that his son's marriage brought about a dramatic change in his life and it has been devastating to see the depression and anxiety caused by his separation from the applicant. ***Letter from Applicant's Spouse's Father***, dated October 10, 2006. The applicant's spouse's former employer states that the applicant's spouse's inability to focus seemed to disappear when he met the applicant and that he quickly became one of their top representatives, maintaining his performance until the applicant went to Mexico. *Letter from Applicant's Spouse's Former Employer*, undated. Without the applicant, his focus became a problem again, and the denial of the applicant's spouse's waiver application has devastated both his personal and professional life. *Id.*

The licensed professional counselor states that given the applicant's spouse's history of depression, attention deficit disorder and history of drug and alcohol abuse, it is possible that he would have a decline in mood and display some of the symptoms of depression that he is reporting (difficulty sleeping, difficulty in getting interested in joyful activities, difficulty in remembering and concentrating, moodiness, poor appetite, inability to work and internalizing his feelings); he could potentially have a relapse into his prior alcohol or drug abuse; and the chance of going into a major depressive order is likely possible, potentially life-threatening and could contribute to further psychological deterioration. *Psychological Evaluation*, at 2. The licensed professional counselor states that on the Beck Depression Inventory-II the applicant's spouse scored in the severe range of depression and that his score on the Homes-Rahe Inventory implies a fifty-percent chance of a major

health breakdown in the next two years, and it is critical to minimize the level of stress in his life. *Id.* The licensed professional counselor states that estrangement from the applicant would likely have deleterious effects on the applicant's spouse's emotional and physical functioning, and could potentially trigger a relapse of his depression, attention deficit disorder, and drug and alcohol abuse. *Id.* at 4.

The AAO again notes the tentative nature of the conclusions reached by the licensed professional counselor regarding how separation from the applicant would affect her spouse's mental state and does not find them sufficient to demonstrate that the applicant's spouse would experience extreme emotional hardship in the applicant's absence. While the AAO acknowledges the applicant's spouse's attention deficit disorder, it also finds the record to offer insufficient proof that this condition, if he remains in the United States, would result in extreme hardship for him.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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. *Hassan v. INS, supra,* held further that the 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.