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

Office: CIUDAD JUAREZ, MEXICO Date:

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IN RE:

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:

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.


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Ciudad Juarez, 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 and two children are U.S. citizens and she seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Officer-in-Charge*, at 4, dated February 21, 2006.

On appeal, counsel asserts that there are new factors to consider in this case, the applicant's spouse has become clinically depressed, and the applicant's spouse will be financially and mentally ruined if he resides in Mexico. *Form I-290B*, dated March 20, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, a psychological evaluation of the applicant's spouse, a prescription statement for the applicant's spouse, photographs of the applicant's family, an article on wages in Mexico, financial and educational documents for the applicant's spouse, and statements from the applicant's spouse's son, daughter and former wife. 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 May 2000 and departed the United States in February 2003. The applicant accrued unlawful presence during this entire 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 February 2003 departure.

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 or her children 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 the qualifying relative in the event of relocation to Mexico. Counsel states that the applicant's spouse would not be able to pay child support for his son from his prior marriage, and he would have to default on his other financial obligations and declare bankruptcy. *Brief in Support of Appeal*, at 2, undated. The record reflects that the applicant's spouse is obligated to pay \$600 monthly in child support for his son. *Applicant's Spouse's Divorce Decree*, at 2, dated November 14, 2002. The record includes an evaluation of the applicant's spouse's finances by a certified public accountant that states that, if the applicant's spouse relocates to Mexico, he will have to default on his car loan, the bank will likely sue him, he will have to default on his rental contract, he will likely get sued for unpaid rent, he will not be able to pay his child support, his 401K will not be funded, his social security will be drastically affected, and he will have to declare for bankruptcy in the United States. *Letter from [REDACTED]* at 1-3, dated March 15, 2006. Counsel states that the applicant's spouse did not finish high school, he is unlikely to get a higher wage than a line worker, his income will be under \$6,000 per year, and this is not enough to cover his \$600 per month child support. *Brief in Support of Appeal*, at 2. The record reflects that the average wage for line workers in Mexico is \$10 per day (\$20 with benefits included). *CNN Report, Minimum Wage to Rise in Mexico*, dated March 20, 2006. Counsel states that the applicant's spouse has hypercholesterolemia and he would not be able to afford up to \$90 a month for the medication he needs. *Brief in Support of Appeal*, at 3.

The record reflects that the applicant's spouse is taking Lipitor for hypercholesterolemia. *Prescription Note for the Applicant's Spouse*, undated. However, while the record also establishes the applicant's spouse's financial obligations in the United States, it does not include the documentary evidence necessary to establish that the applicant's spouse would be unable to obtain employment in Mexico or that he would be limited to minimum wage employment. The AAO notes that the record does not demonstrate that the certified public accountant is an authority on the economy of Mexico or employment opportunities there. It will, therefore, not accept her prognosis of the impact that relocation would have on the ability of the applicant's spouse to meet his financial obligations.

Counsel states that the applicant's spouse never finished high school, he has been taking classes to receive the equivalent of a high school diploma and he will not receive the degree if he has to leave the United States for ten years. *Brief in Support of Appeal*, at 3-4. The record includes supporting documentary evidence that the applicant's spouse has taken and completed several high school courses. *Documents from Step Up Community Learning Center*, various dates.

Counsel states that the applicant's spouse has to choose between his U.S. citizen children in Mexico and his U.S. citizen children in the United States, this hardship is especially extreme as the applicant's spouse grew up without a father which caused him to quit school and have a very hard childhood, and he does not want his children to grow up fatherless. *Brief in Support of Appeal*, at 4. The applicant's spouse's son states that he has a very strong relationship with the applicant's spouse, he spends at least every other weekend with him, and the applicant's spouse would feel really bad if had to go to Mexico because he loves him and his sister. *Applicant's Spouse's Son's Statement*, at 1, dated March 16, 2006. The record reflects that the applicant's spouse has joint custody of his son. *Applicant's Spouse's Divorce Decree*, at 2. The applicant's spouse states that he would miss being there for his son in his teenage years. *Applicant's Spouse's Statement*, at 1, dated March 16, 2006. The former wife of the applicant's spouse states that she would be unwilling to have her son travel to Mexico even to visit his father. *Letter from Ex-spouse of the Applicant's Spouse*, dated August 4, 2006. The record reflects that the ex-wife is the primary residential custodian for the son. *Divorce Decree*, at 3, dated November 14, 2002. The record also reflects that the applicant's spouse has an adult daughter to whom he is close. *Applicant's Spouse's Daughter's Statement*, at 1, dated March 16, 2006.

Considering the hardship factors in totality, the AAO finds that the applicant's spouse would experience extreme hardship if he relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that the qualifying relative remains in the United States. Counsel states that the applicant's spouse has developed clinically diagnosed depression since the waiver was denied. *Brief in Support of Appeal*, at 3. The applicant's spouse was evaluated by a psychologist who states that the applicant's spouse has developed depression, which includes poor appetite, loss of interests, motor retardation, sleep disturbance, and fatigue; he has experienced symptoms of anxiety including heart palpitations, dizziness, faintness, intense muscle aches and twitching and dry mouth; he suffers muscular tension in his neck; his fatigue is preventing him from maintaining his exercise program necessary for his

cholesterol reduction program; and one of the sources of his symptoms is his very high current situational stress. *Psychological Evaluation*, at 3, dated March 17, 2006. The applicant's spouse completed the Minnesota Multiphasic Personality Inventory-II during his psychological evaluation. *Id.* at 1. The AAO notes that the psychologist did not reach a clinical diagnosis or identify the type/severity of the depression or anxiety suffered by the applicant's spouse. Instead, the psychologist's findings focus on the extent to which the applicant's spouse's circumstances satisfy the extreme hardship requirement in this proceeding. Accordingly, the AAO finds the evaluation is of diminished value to a determination of extreme hardship.

As mentioned, counsel states that the applicant's spouse has to choose between his U.S. citizen children in Mexico and his U.S. citizen children in the United States, this hardship is especially extreme as the applicant's spouse grew up without a father which caused him to quit school and have a very hard childhood, and he does not want his children to grow up fatherless. *Brief in Support of Appeal*, at 4. The psychologist states that the applicant's spouse sees the two children from his marriage to the applicant for only two weeks a year, he is unable to fly due to anxiety, he drives to Mexico once a year during his two week vacation, he promised himself that he would not abandon his children as he felt abandoned by his father and stepfather, and the applicant indicated to him her declining ability to continue in a relationship that had no real future for seven more years. *Psychological Evaluation*, at 2, 5-6. The record, however, does not establish that the applicant's spouse would have to abandon his U.S. citizen children if he remained in the United States. No documentary evidence demonstrates that the applicant's spouse would be unable to bring his U.S. citizen children to the United States for extended visits, to attend school or to live with him permanently. The record does not include evidence that the applicant would oppose her children moving to the United States. Further, it does not establish that the applicant's spouse would be unable to care for his children on his own, or that he would be unable to find or afford childcare. While the record reflects that the applicant's spouse is taking Lipitor for hypercholesterolemia, it does not document that his medical condition affects his ability to function on a daily basis. *Prescription Note for the Applicant's Spouse*, undated. The record also does not reflect that the children have any medical conditions or other issues that would cause unusual difficulties for a single parent. There is nothing in the record to support the claim that the applicant is unlikely to remain married to her spouse.

Based on the record, the AAO finds that there is insufficient evidence that the applicant's spouse would experience extreme hardship if he remained in the United States without the applicant.

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. In the present matter, the record does not distinguish the hardships that would be encountered by the applicant's spouse from those commonly associated with removal. Accordingly, it does not establish that the applicant's spouse would suffer extreme hardship if she is excluded from the United States.

A review of the documentation in the record has failed 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.