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20 Massachusetts Ave., NW, Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: MOSCOW, RUSSIA

Date: FEB 02 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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Moscow, Russia. 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 Ukraine 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 is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her spouse and the application was denied accordingly. *Decision of the Officer-in-Charge*, at 5, dated September 18, 2006.

On appeal, counsel asserts the officer-in-charge abused her discretion and made mistakes of law and fact. *Brief in Support of Appeal*, at 1, dated November 13, 2006. Counsel provides new evidence.

The record includes, but is not limited to, counsel's brief, information on clinical depression, a psychological evaluation of the applicant's spouse, a follow-up letter to that evaluation and the applicant's spouse's telephone records. 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 or around September 2000 and departed the United States on January 25, 2006. The applicant accrued unlawful presence from in or around September 2000, the date she entered the United States without inspection, until January 25, 2006, the date she departed the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(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 January 25, 2006 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 the applicant experiences due to removal is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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 the applicant's spouse must be established whether he resides in Ukraine or in the United States, as he 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 her spouse in the event that he resides in Ukraine. Counsel states that the applicant's spouse was diagnosed with Major Depressive Disorder, Moderate Severity; his condition is linked to separation from the applicant and her visa denial; and it is due to anxiety over the possibility of moving to Ukraine. *Brief in Support of Appeal*, at 4. However, the psychological evaluation does not reflect that the applicant's spouse's depression is due in any part to anxiety over the possibility of moving to the Ukraine nor does it address any potential psychological or emotional problems that the applicant's spouse would encounter if he relocated to Ukraine. See *Psychological Evaluation*, dated October 2, 2006.

Counsel states that if the applicant's spouse moves to Ukraine, he will abandon his most marketable skill and would not be able to find similar employment as it does not exist. *Brief in Support of Appeal*, at 5. The applicant's spouse's employer states that the applicant's spouse occupies a unique position, his opportunities are many and varied due, in part, to their specific geographic location and market, he does not believe the applicant's spouse could find another opportunity like this anywhere, and the company does not do business or plan to initiate business in the Ukraine. *Letter from [REDACTED]*, dated May 7, 2006. A Ukrainian employment expert states that the opportunities for foreign professionals to enter the Ukrainian job market are limited, and the limitation exists because foreign workers lack experience in the Ukrainian market, understanding of local work culture, proficiency in spoken and written Ukrainian and Russian languages, and professional networks. *Letter from [REDACTED]*, at 1, dated June 26, 2006. The expert states that he has reviewed the resume and work experience of the applicant's spouse, and the aforementioned factors make his entry into the positions which best fit his employment experience impossible. *Id.* The expert states that the applicant's spouse would have to enter the field at the lowest level, his monthly earnings would not exceed \$300 and a salary of \$300 would not be enough to support himself and his family. *Id.*, at 1-2. However, the record does not reflect that the applicant cannot work as well and that their combined incomes would place them in financial hardship. The AAO notes that the record is not clear as to the proficiency, if any, of the applicant's spouse in Russian and/or Ukrainian, and any hardship related to this. The record does not include evidence of any other types of hardship. A review of the record

reflects that the applicant's spouse would encounter difficulties in Ukraine, however, the record does not include sufficient evidence that he would experience extreme hardship if he relocated to the Ukraine.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse was evaluated by a psychologist who states:

...three well-validated measures of depression were administered: the Beck Depression Inventory, the Zung Self-Rating Depression Scale and the Automatic Thoughts Questionnaire. Scores on all three measures indicate clinically significant depression, as evidenced by persistent feelings of sadness, despair and helplessness; sleep and appetite disturbance, with consequent weight loss; amotivation, loss of interest in activity, fatigue and irritability...the clinical interview and test results indicate that [the applicant's spouse] is clinically depressed and meets criteria for the diagnosis of Major Depressive Disorder, single episode, moderate (DSM IV: 296.22). The onset of [the applicant's spouse's] depression was coincident with the denial of [the applicant's] visa, their subsequent separation and uncertainty of being reunited in the future.

Psychological Evaluation.

The psychologist indicates that the applicant's spouse's depressive symptoms are severe and persistent, and that he will meet with the applicant's spouse for an estimated three months to help reduce his depression and to evaluate him for anti-depressant medication. *Letter from [REDACTED]*, dated November 10, 2006. Based on the applicant's mental health issues, the AAO finds that he 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.

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.