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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

HG

FILE: AAO 08 120 50005 Office: MEXICO CITY [REDACTED] Date: **AUG 05 2010**
(CDJ 2005 600 522)

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

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

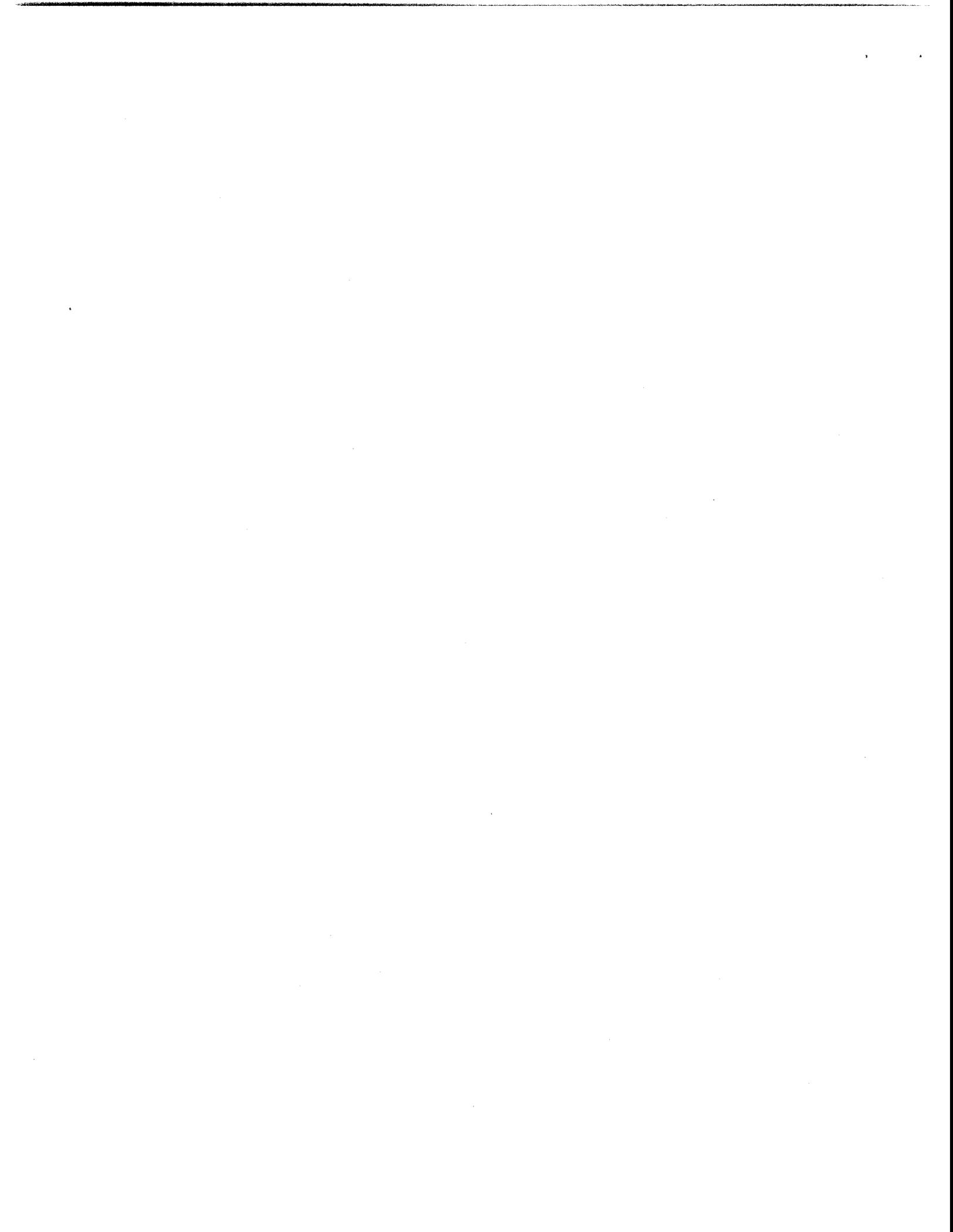
The applicant is a native and citizen of Mexico who resided in the United States from 1993, when she entered the country without inspection, to September 2006, when she returned to Mexico to apply for an immigrant visa. She was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (The Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for a period of one year or more. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States and reside with her husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated November 23, 2007.

On appeal, the applicant's representative asserts that U.S. Citizenship and Immigration Services (USCIS) erred in failing to evaluate the effects of separation from his wife and having to be a single parent on the applicant's husband. *See Letter from Accredited Representative in Support of Appeal* dated January 22, 2008. The applicant's representative further states that the applicant's husband is suffering mental and emotional hardship and faces losing his job and benefits, and these hardships were taken very lightly by USCIS in evaluating the waiver application. *See Letter from Accredited Representative in Support of Appeal*. In support of the waiver application and appeal, the applicant's representative submitted letters from the applicant's husband, two psychological evaluations, a copy of an ultrasound for the applicant, and information on conditions in Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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.
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- (v) Waiver. - The Attorney General [now Secretary, 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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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. *Id.* at 566. The BIA has further stated:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). 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).

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a twenty-six year-old native and citizen of Mexico who resided in the United States from 1993, when she entered without inspection, until September 2006. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from April 19, 2002, when she turned eighteen, to September 2006. The applicant’s husband is a thirty-three year-old native and citizen of the United States. The applicant currently resides in Tijuana, Mexico and her husband resides in Chula Vista, California.

The applicant’s husband states that the only place he has lived is the United States and asks that USCIS take this and other factors into consideration. See *Letter from [REDACTED] in Support of Appeal*. He further states that he worries for his family’s safety because of rising crime rates in Tijuana. See *Psychosocial Evaluation for [REDACTED]* dated August 9, 2006. The record also contains information on conditions in Mexico submitted with the waiver application, but no further information was submitted concerning hardship to the applicant’s husband if he were to relocate to Mexico. The AAO notes, however, that the U.S. Department of State has issued a travel warning for Mexico, which states:

The Department of State has issued this Travel Warning to inform U.S. citizens traveling to and living in Mexico of concerns about the security situation in Mexico, and that it has authorized the departure of the dependents of U.S. government personnel from U.S. consulates in the Northern Mexican border cities of Tijuana, [REDACTED] and [REDACTED] until April 12. Family members of US Government personnel assigned to other areas of Mexico outside the Mexican border states are not affected by this departure measure. This Travel Warning supercedes that of February 22, 2010, and announces the authorized departure of some dependents and updates security incidents.

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Violence Along the U.S. - Mexico Border

Mexican drug cartels are engaged in violent conflict - both among themselves and with Mexican security services - for control of narcotics trafficking routes along the U.S.-Mexico border. To combat violence, the government of Mexico has deployed military troops throughout the country. U.S. citizens should cooperate fully with official checkpoints when traveling on Mexican highways.



Some recent confrontations between Mexican authorities and drug cartel members have resembled small-unit combat, with cartels employing automatic weapons and grenades. Large firefights have taken place in towns and cities across Mexico, but occur mostly in northern Mexico, including [REDACTED]. During some of these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area. . . .

A number of areas along the border continue to experience a rapid growth in crime. Robberies, homicides, petty thefts, and carjackings have all increased over the last year across Mexico, with notable spikes in Chihuahua, Sinaloa, and northern Baja California. [REDACTED] and [REDACTED] experienced public shootouts during daylight hours in shopping centers and other public venues. Criminals have followed and harassed U.S. citizens traveling in their vehicles in border areas including Nuevo Laredo, Matamoros, and Tijuana. . . .

U.S. citizens are urged to be alert to safety and security concerns when visiting the border region. Criminals are armed with a wide array of sophisticated weapons. In some cases, assailants have worn full or partial police or military uniforms and have used vehicles that resemble police vehicles. While most crime victims are Mexican citizens, the uncertain security situation poses serious risks for U.S. citizens as well. U.S. citizen victims of crime in Mexico are urged to contact the consular section of the nearest U.S. consulate or Embassy for advice and assistance. Contact information is provided at the end of this message. . . . *U.S. Department of State, Bureau of Consular Affairs, Travel Warning for Mexico* dated March 14, 2010.

The applicant's husband was born in the United States and has never resided in Mexico. When considered in the aggregate, the hardships he would experience resulting from having to sever his ties to the United States and adjust to conditions in Mexico and from the dangers associated with the rate of violent crime in Tijuana, where the applicant resides, would amount to extreme hardship for the applicant's husband if he relocated to Mexico.

The applicant's husband states that he is suffering emotional hardship due to separation from the applicant and becoming a single father, and having to work and raise their son on his own has caused him significant stress. *See Letter from [REDACTED]*. He further states his son is suffering hardship and is having difficulty at school. A psychological evaluation submitted with the appeal states that he is experiencing considerable financial hardship, is at risk of losing his job, and is accruing personal debt since the applicant's departure and concludes that he is suffering from generalized anxiety and panic attacks. *See Psychological Evaluation by [REDACTED] Psychology Intern*, dated January 11, 2008. The evaluation further states that the applicant's husband is suffering from severe headaches but has not seen a doctor because he has no medical insurance, and states that his work performance has been affected by these symptoms as well as his panic attacks. *See Psychological Evaluation by [REDACTED]*. The psychological evaluation further states that the applicant's husband reports that his job is in danger because he must take time off to care for his son and because of his work performance. The applicant's husband additionally states that he is suffering financial



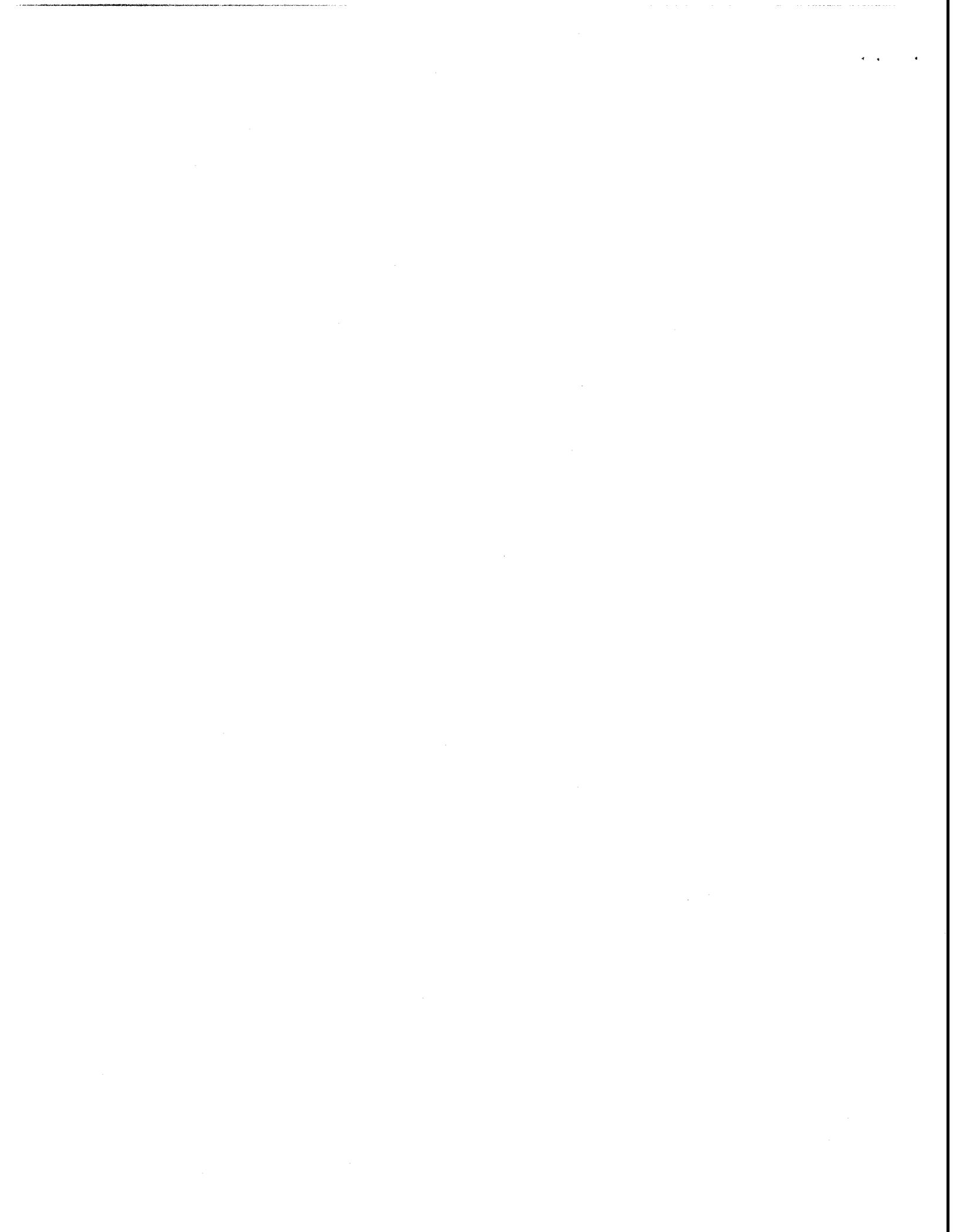
hardship as a result of having to maintain two households and the psychological evaluation states that he must pay for medical insurance for his son and for the applicant, who was pregnant at the time the appeal was filed. It further states that he is struggling to pay his bills. *See Psychological Evaluation by Jessica Buss.*

The record indicates that the applicant's spouse is having difficulty working and raising their son on his own, and as a result he is suffering psychological hardship as well as physical symptoms that are affecting his work performance and creating additional stress. These hardships, when combined with the emotional hardship resulting from separation from his wife and child and concern for their safety due to conditions in Tijuana, rise to the level of extreme hardship for the applicant's husband if he remains in the United States without the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(a)(9)(B)(v) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's immigration violation, remaining unlawfully in the United States from 2002 to 2006. The AAO notes that the applicant was only nine years old when she was brought to the United States. The favorable factors in the present case are the hardship to the applicant's husband and children and the applicant's lack of a criminal record or additional immigration violations.



The AAO finds that applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.

