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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

H6

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **AUG 05 2010**

IN RE: Applicant: [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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 waiver application will be approved. The matter will be returned to the field office director for continued processing.

The record reflects that 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 10 years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 reside in the United States with his United States citizen wife and child.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 23, 2007.

On appeal, counsel states, generally, that the director failed to apply proper standards, and consider the evidence provided in evaluating the "extreme hardship" the applicant's spouse would suffer in the United States, and in Mexico. Counsel submits a brief and additional evidence. *See, Form I-290B and attachments.*

The record includes two letters from the applicant's wife detailing the hardship claim, together with bank account statements; letters from relatives and family friends describing the impact of the applicant's separation on the applicant and her son; and, country conditions reports on Mexico. *See, letters from [REDACTED] and attachments* submitted with the appeal. 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:

(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 [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.

In the present application, the record indicates that the applicant entered the United States in June 1999, without inspection, and remained in an unlawful status until September 2006, when he departed for Mexico. On November 21, 2003, the applicant's wife filed a Form I-130 on behalf of the applicant. On September 27, 2004, the applicant's Form I-130 was approved. On December 10, 2006, the applicant filed a Form I-601. On November 23, 2007, the District Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant accrued unlawful presence from June 1999, the date he entered the United States, until September 2006, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his September 2006 departure from the United States. The applicant is, therefore, 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.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. The AAO also notes that the record contains several references to the hardship that the applicant's child would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(v) of the Act provides that a waiver is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's child will not be considered, except as it may cause 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 concept of extreme hardship to a qualifying relative "is not...fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is



diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has also held:

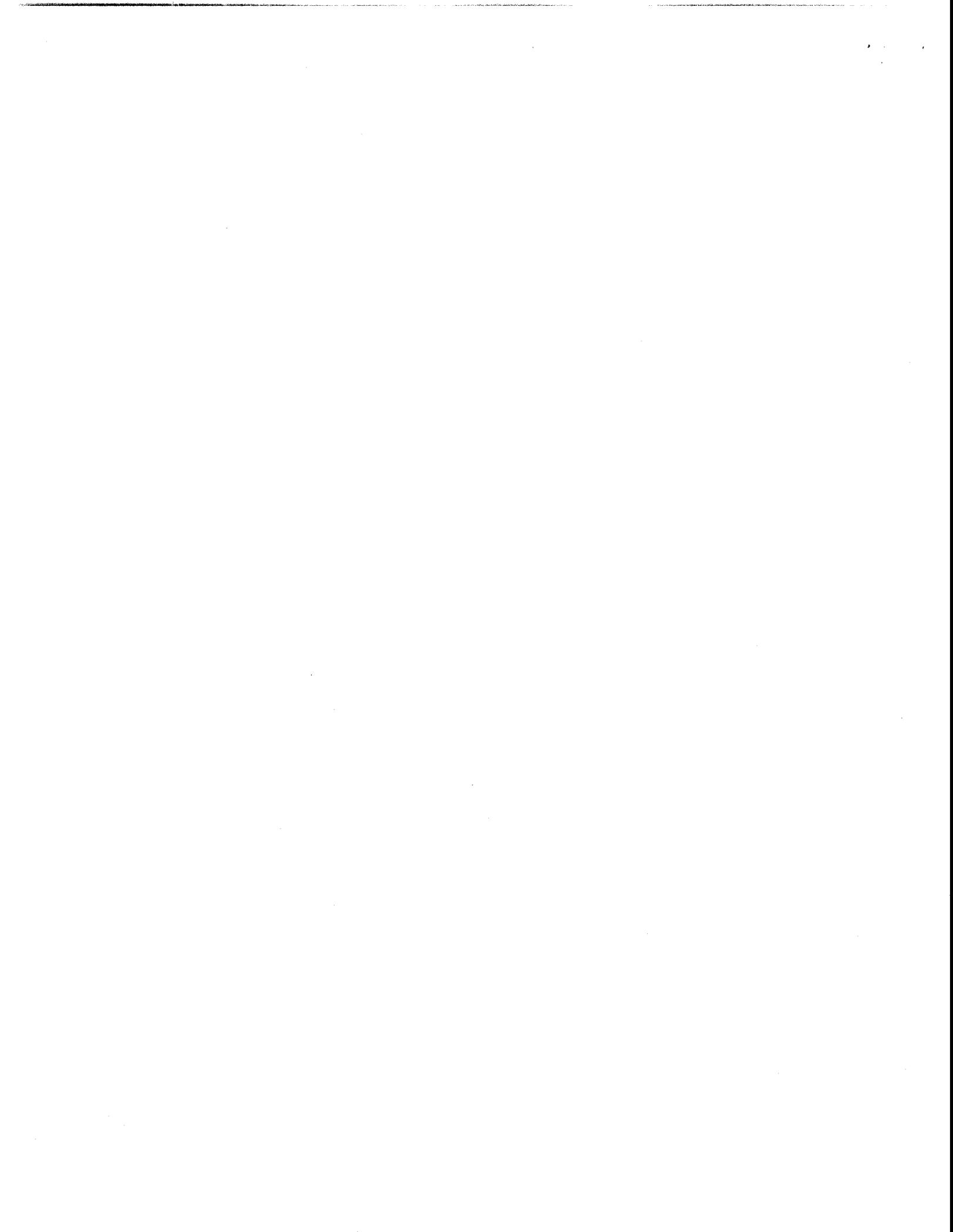
Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In her letters (submitted with the Form I-601, and on appeal), the applicant’s wife states her family needs the applicant in the United States because his absence will cause financial and emotional hardship, and will affect their way of life and their 3-year old child. In her letter, dated October 24, 2006, the applicant’s spouse states that the family “received a severe blow” due to the loss of the applicant’s income, and that before the applicant left for Mexico their joint take home income was \$1,200 bi-weekly. The applicant states that her bi-weekly take home pay is now only \$570 which she must use to pay expenses including, rent, food, and household bills, and to help her husband in Mexico. She also states that due to her husband’s absence she is unable to take computer classes as planned because of “economic reasons and having to care for [her] son alone.” The applicant submits statements from State Central Credit Union as evidence of her loan obligation with the credit union, and a medical invoice from [REDACTED] hospital which reflects medical services provided to her son. It is noted that although these items do not cover all of the household expenses, each item by itself requires a payment which would substantially deplete the applicant’s spouse’s income.



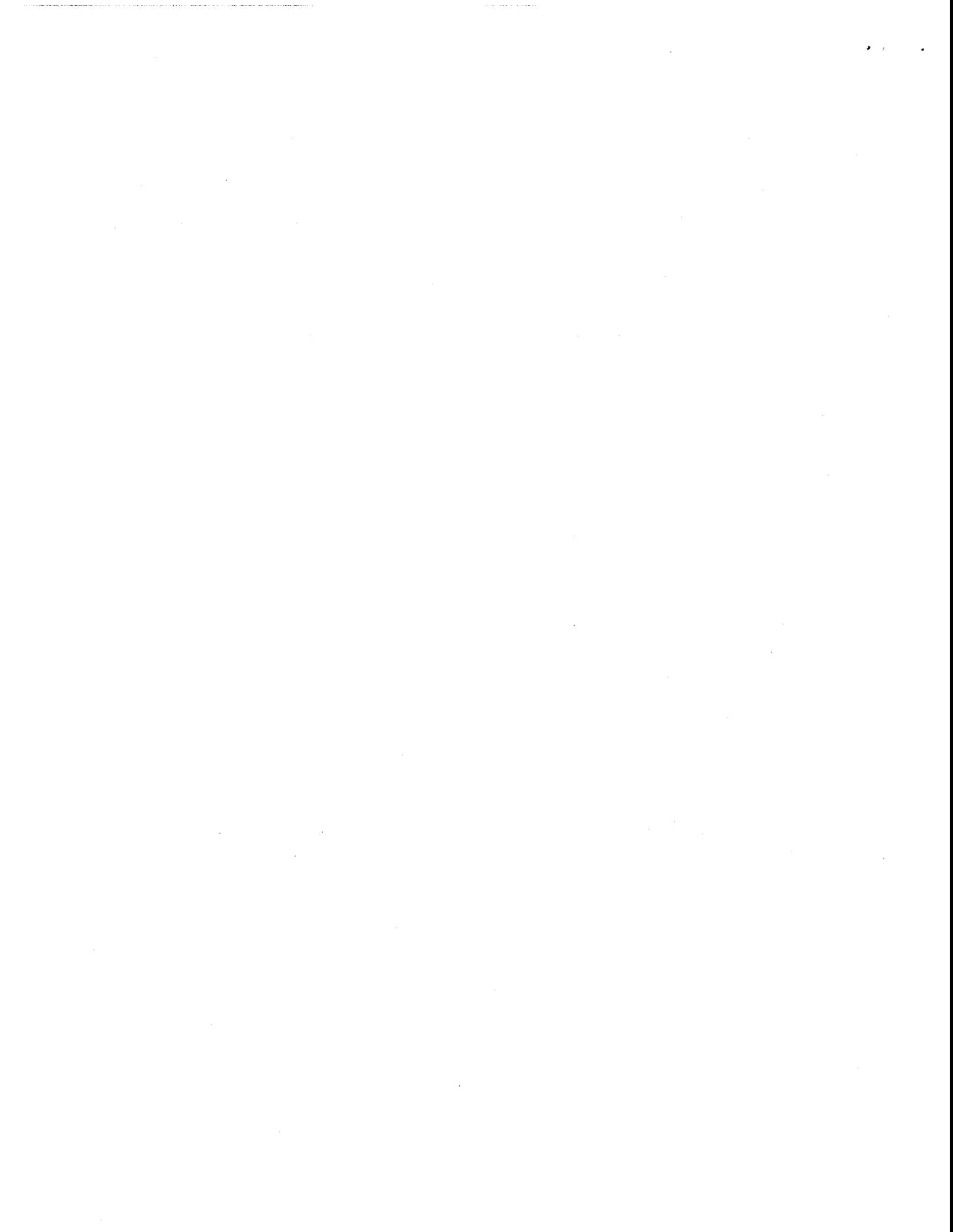
The applicant's spouse further states that she and the applicant have lived together for six years and that she loves her husband and is extremely attracted to him and that as a result of separation from her husband, she has become "very sad, anxious and desperate and depressed" and that her son "cries a lot because he misses his father." She also states that her education and career plans will be hindered as she would not be able to pursue her education to get a degree in Hotel Management and advance in her career, while working and caring for her child alone. Letters from, [REDACTED] describe the applicant and his wife and son as a loving family, and state that since their separation his wife and son have been sad because their lives have been disrupted.

The AAO notes that the applicant's child may experience some hardship because the applicant is in Mexico; however, the applicant's child is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act. Although hardship to the applicant's child will not be considered, the AAO finds that such hardship will cause severe emotional and financial hardship to the applicant's spouse, as she would be left alone to care for the child, and at the same time work to support the family. The entire parental burden of raising a child, and having to pay medical expenses from her low paying job, would fall solely on the applicant's spouse. The applicant's wife states it would be difficult for her to pay the household expenses by herself and she has had to take a second job and she cannot continue with her education and her employment career. Having to stop pursuing her education would result in emotional hardship for the applicant's spouse as she would be deprived of the opportunity to pursue a career in hotel management to which she has aspired. This deprivation would relegate the applicant's spouse to working in the supervisory housekeeping capacity, a low paying alternative, as a means of marginally sustaining her family and household. It is noted the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). In this case, however, the AAO finds that the level of hardship the applicant's spouse would endure is beyond what would normally be expected of families who are separated.

The applicant states that she and the child would suffer extreme hardship in Mexico because of the high crime rate, the lack of access to education in the country, and the lack of employment opportunities for her there. The applicant's wife states that she has to work to support the family and the loss of this employment may result in hardship. The AAO notes that recently the United States Department of State, *Bureau of Consular Affairs*, warned of dangers in Mexico. See, United States Department of State, *Bureau of Consular Affairs*, Washington, DC, *Travel Warning*, May 10, 2010.

The record reflects that the applicant's spouse would be forced to relocate to a country to which she is not familiar. She would have to leave her support network, her gainful employment, and her career opportunity, and she would be concerned about her and her child's safety, health, academics, and financial well-being at all times while in Mexico. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his United States citizen spouse would suffer extreme hardship were the applicant



unable to reside in the United States. Moreover, it has been established that the applicant's United States citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship.

However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe.

The favorable factors in this matter are the hardships the applicant's United States citizen spouse and U.S. citizen child would face regardless of whether they relocate to Mexico or remain in the United States, the applicant's apparent lack of a criminal record, the passage of more than ten years since the applicant's entry to the United States without inspection. The unfavorable factors in this matter are the applicant's entry to the United States without inspection and his unlawful residence in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility outweighs the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.

