

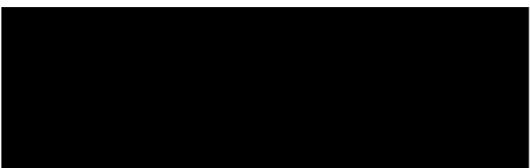
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

tlg



FILE: AAO 08 104 50049 Office: MEXICO CITY (CIUDAD JUAREZ) Date: **AUG 06 2010**  
(CDJ 2005 674 391 313)

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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).

Thank you,

A handwritten signature in black ink that reads "Perry Rhew".

for  
Perry Rhew  
Chief, Administrative Appeals Office

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*[Handwritten signature]*

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

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 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. The applicant is married to a U.S. citizen and 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 with her husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated December 31, 2007.

The record contains, *inter alia*: two letters from the applicant's husband, [REDACTED] a letter from [REDACTED], [REDACTED]'s employer; a letter from a pre-kindergarten center; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

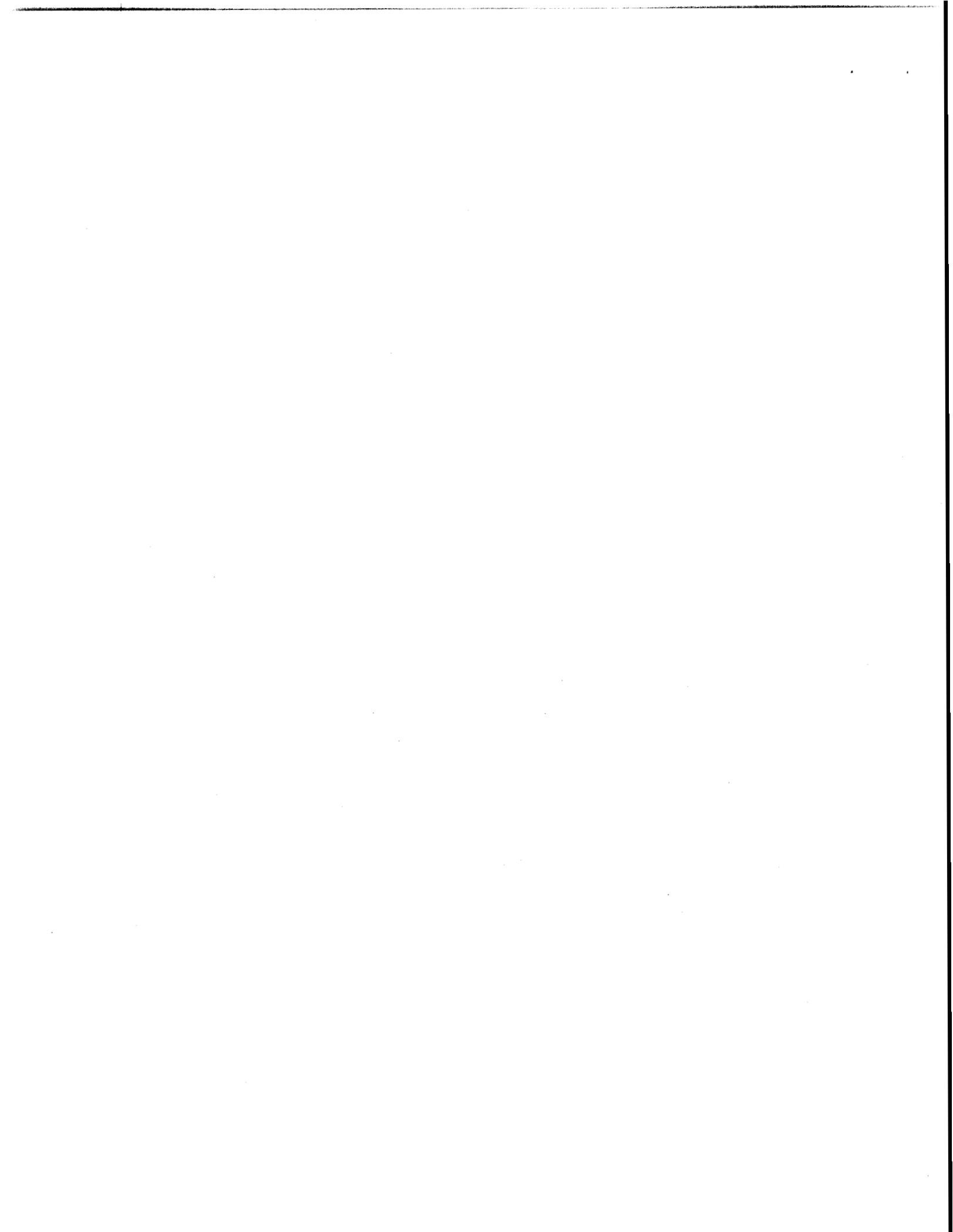
(i) In General - Any alien (other than an alien lawfully admitted for permanent residence) who -

....

(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.

....

(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.



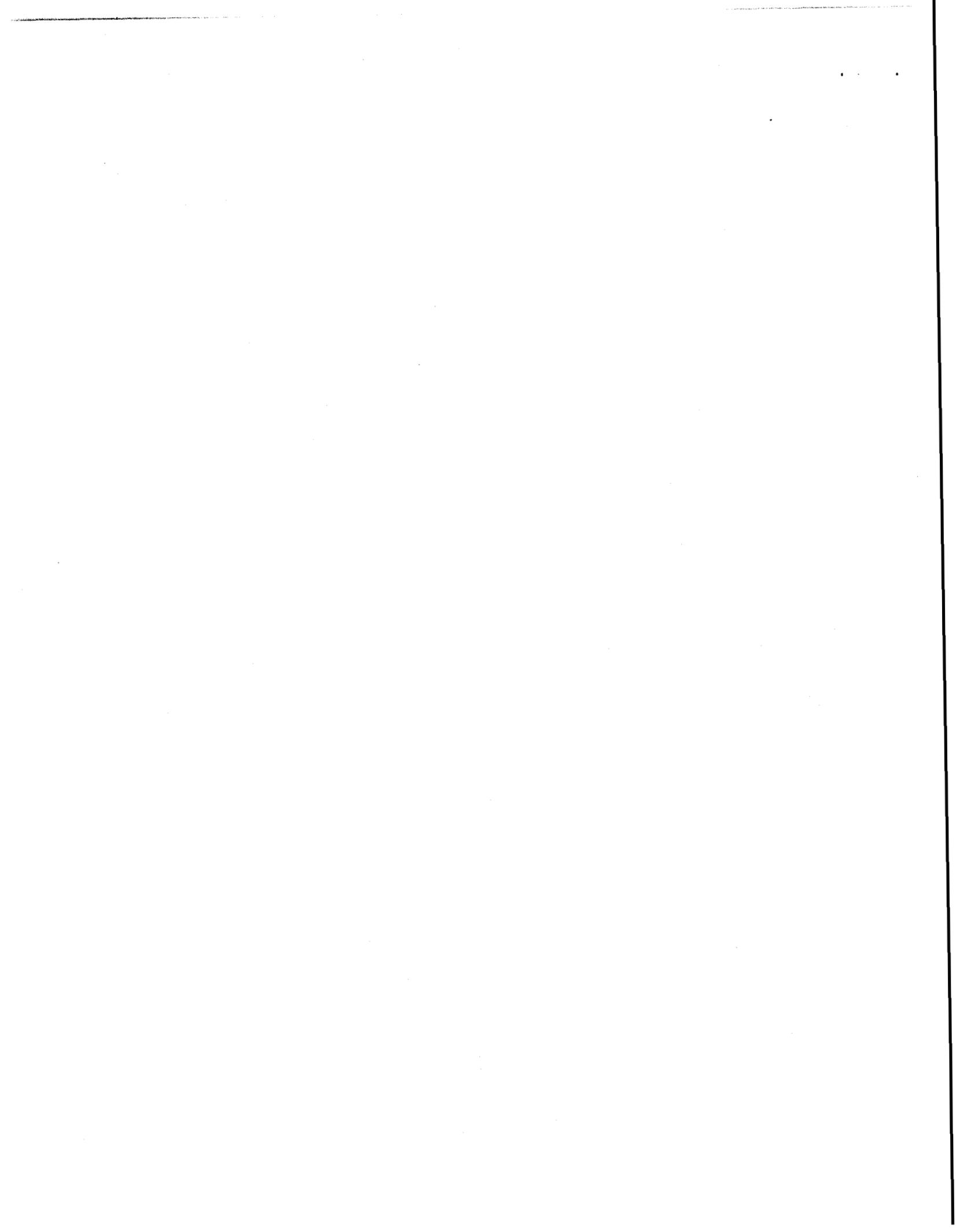
In this case, district director found, and the applicant does not contest, that she entered the United States without inspection in 2001 and remained until October 2006. The applicant accrued unlawful presence of for five years. She now seeks admission within ten years of her October 2006 departure. Accordingly, she 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 admission to the United States within ten years of her last departure.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: 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.

In this case, the record reflects that the applicant wed [REDACTED], a native of and citizen of the United States, on September 29, 2004. According to the applicant's waiver application, the couple has two U.S. citizen children. The applicant's spouse is a qualifying relative for purposes of a section 212(a)(9)(B)(v) waiver. Hardship to the applicant's children will be considered only insofar as it results in hardship to the applicant's spouse.

The applicant's husband, [REDACTED] states that his daughter is going to pre-kindergarten and has missed five days of school because her mother is in Mexico. [REDACTED] contends he works from 7 a.m. until 3:30 p.m. and that his daughter cannot attend school because there is no one who can take her. According to [REDACTED] his wife helps get their daughter ready for school and helps her with her homework. In addition, [REDACTED] states that he is a heating, ventilation, and air conditioning (HVAC) installer. He contends it has become very difficult to pay for his own expenses in the United States, including child care, as well as his wife's expenses in Mexico because he makes \$13



per hour. He contends he has to work all over Texas as well as in New Mexico, sometimes driving eight to ten hours away. He states he cannot leave his four-year old daughter alone and needs his wife to take care of her. Furthermore, [REDACTED] contends they have a newborn son and that "there is no place for my child in Juarez." He states his son needs to have his check ups and his shots in El Paso and that he needs his wife to take him to his appointments. *Letters from* [REDACTED] dated January 7, 2008, and October 29, 2006.

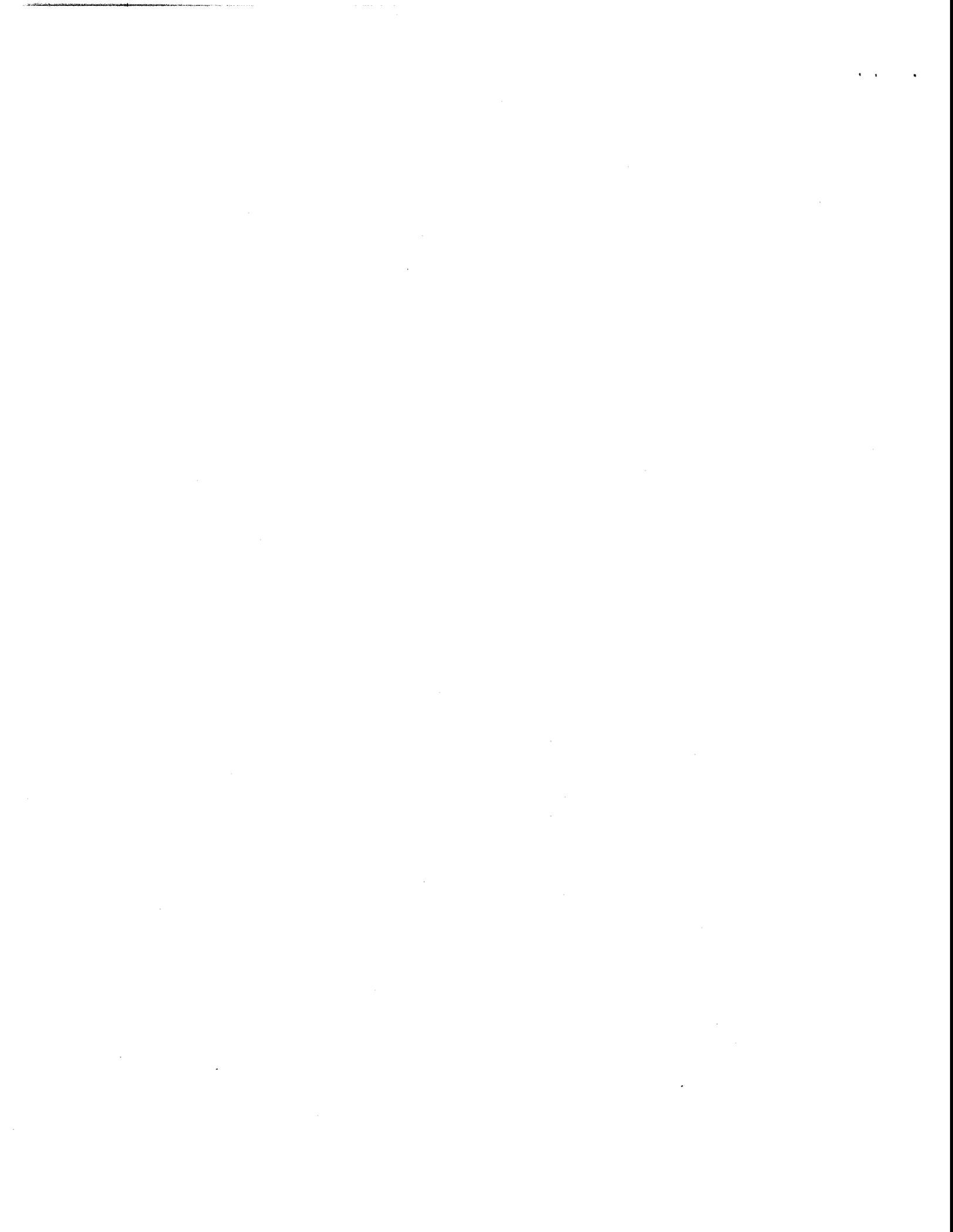
A letter from [REDACTED] employer states that [REDACTED] is a full-time employee and "is required to go out of town on occasions for out of town projects." *Letter from* [REDACTED], dated November 1, 2006. In addition, a letter from the couple's daughter's pre-kindergarten center states that the child has a good attendance record and missed five days "because Mom is fixing immigration papers." *Letter from* [REDACTED] dated October 27, 2006.

It is not evident from the record that the applicant's husband has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, [REDACTED] does not discuss the possibility of moving to Mexico to avoid the hardship of separation and he does not address whether such a move would represent a hardship to him. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility and does not rise to the level of extreme hardship based on the record. The BIA and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, 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 (9<sup>th</sup> 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991) (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).

With respect to [REDACTED] contention that he needs his wife to take care of their children, take their daughter to school, and take their son for check-ups, there is no documentation in the record showing that his hardship is beyond what would normally be expected. There is no allegation that the applicant's situation is unique or atypical compared to other individuals separated as a result of inadmissibility. *See Perez v. INS, supra* (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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)(v) 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.

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