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



U.S. Citizenship  
and Immigration  
Services

*H2 H6*

[REDACTED]

**MAY 27 2010**

FILE:

[REDACTED]

Office: MEXICO CITY (CIUDAD JUAREZ) Date:

IN RE:

RAUL RAMIREZ MENDOZA

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]

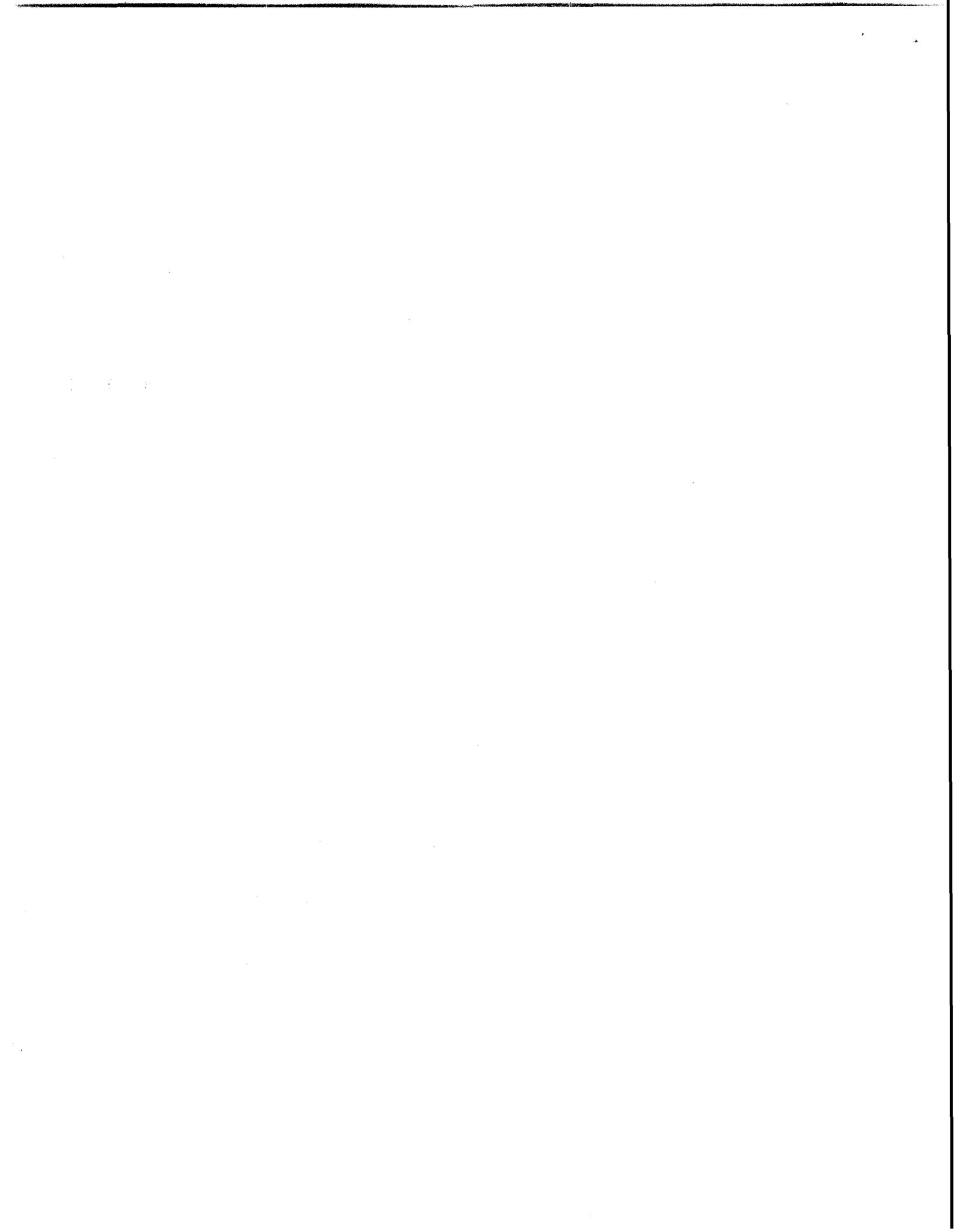
INSTRUCTIONS:

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).

*Perry Rhew for*

Perry Rhew  
Chief, Administrative Appeals Office



**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 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated November 8, 2007.

On appeal, counsel for the applicant asserts that the applicant has shown that his wife will endure extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B*, dated November 3, 2007.

The record contains statements from counsel and the applicant's wife. Counsel indicated on Form I-290B that he would send a brief and/or evidence to the AAO within 30 days of filing the appeal. The appeal was filed on or about December 10, 2007. However, as of the date of this decision, the AAO has received no further documentation or correspondence from the applicant or counsel, and the record is deemed complete. The entire record was reviewed and considered in rendering a decision on the appeal.

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

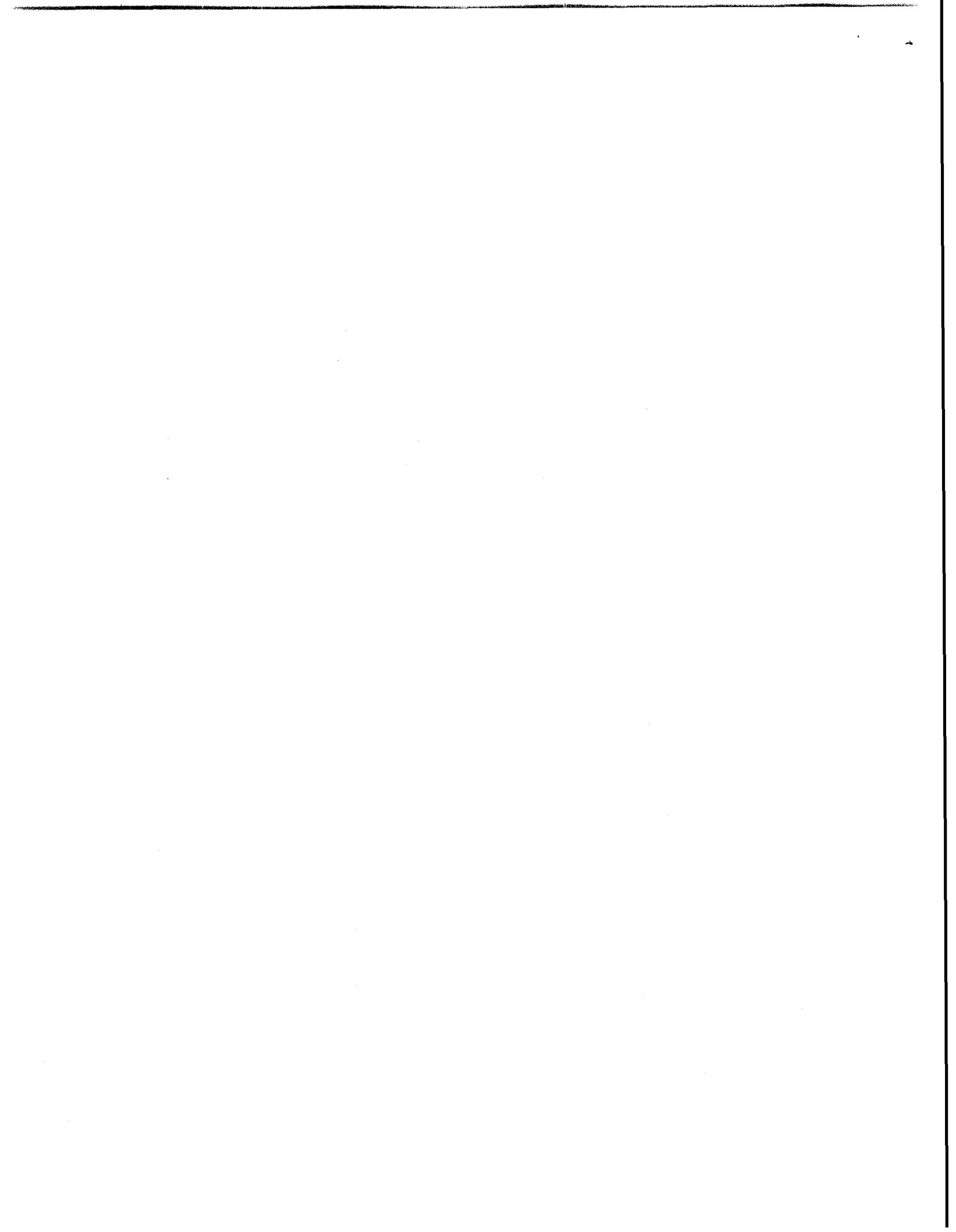
(B) Aliens Unlawfully Present.-

(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.

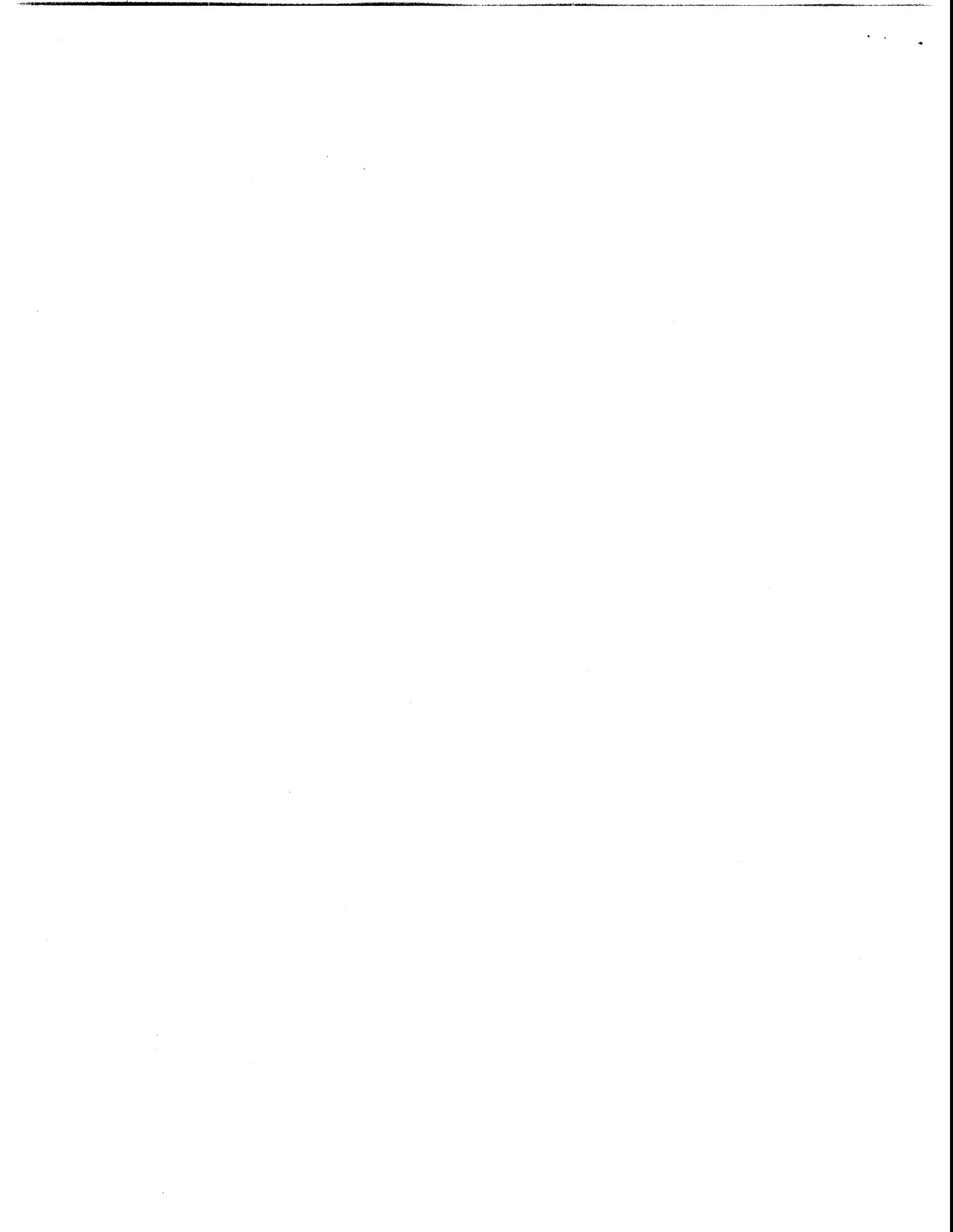
The record reflects that the applicant entered the United States without inspection in or about June 2000. He remained until or about August 6, 2006. Accordingly, the applicant accrued over six years of unlawful presence in the United States. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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 upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

The applicant's wife stated that she and the applicant have a four-year-old son who misses the applicant. *Statement from the Applicant's Wife*, submitted September 5, 2006. She explained that their son's teacher indicated that he is displaying anger and he has become difficult to control. *Id.* at 1. She asserted that she is acting as a single mother and she does not have the means or transportation to obtain therapy for their son. *Id.* She expressed concern that their son will suffer long-term negative emotional effects due to separation from the applicant. *Id.*

The applicant's wife stated that she has another son who attends high school and wishes to further his education in college and law school. *Id.* She provided that the applicant could obtain employment in the United States with favorable compensation which would allow him to assist her older son. *Id.*



The applicant's wife provided that she is employed but that she has just enough funds to meet her family's needs. *Id.* She stated that the applicant used to care for their son so that she could work full-time, but in the applicant's absence she faces challenges working while caring for her son. *Id.*

The applicant's wife expressed that she loves the applicant and that he is a good father and husband. *Id.*

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The applicant's wife indicated that she faces challenges providing economic support for her family without the applicant's assistance. However, the applicant has not submitted any financial documentation for his wife such as evidence of her income or expenses. Thus, the AAO lacks adequate information or documentation in order to conclude that the applicant's wife is enduring economic hardship in the applicant's absence.

The applicant's wife stated that her younger son is suffering emotional hardship due to separation from the applicant. Direct hardship to an applicant's child is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results when an applicant must reside abroad due to a prior violation of U.S. immigration law. The AAO recognizes that the applicant's son faces significant emotional hardship due to being separated from the applicant. Yet, the applicant has not established that he is suffering consequences that can be distinguished from those ordinarily experienced. The applicant has not shown that his son's emotional hardship is elevating his wife's challenges to an extreme level.

The applicant's wife expressed that she loves the applicant and that she wishes for him to reside in the United States. The AAO acknowledges that the separation of spouses often results in significant emotional hardship. However, the applicant has not distinguished his wife's psychological challenges from those commonly experienced when an individual resides apart from a spouse due to inadmissibility. Federal court and administrative decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (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. *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.



It is noted that, as the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for a 10-year period from the date of his last departure, he will no longer be inadmissible due to unlawful presence as of August 6, 2016. Thus, denial of the present waiver application does not eliminate the applicant's wife's opportunity to reside in the United States with a unified family at a future time.

All stated elements of hardship to the applicant's wife, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown that his wife will endure extreme hardship should he be prohibited from entering the United States and she remain.

The applicant has not asserted that his wife will suffer hardship should she join him in Mexico for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. In the absence of clear assertions from the applicant, the AAO may not speculate as to the hardship the applicant's wife may endure. In proceedings regarding a 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. Thus, as the applicant has not stated that his wife will face challenges should she relocate to Mexico, he has not shown that such relocation will result in extreme hardship.

Based on the foregoing, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

