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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



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MAY 27 2010

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ) Date:



IN RE:



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:



INSTRUCTIONS:

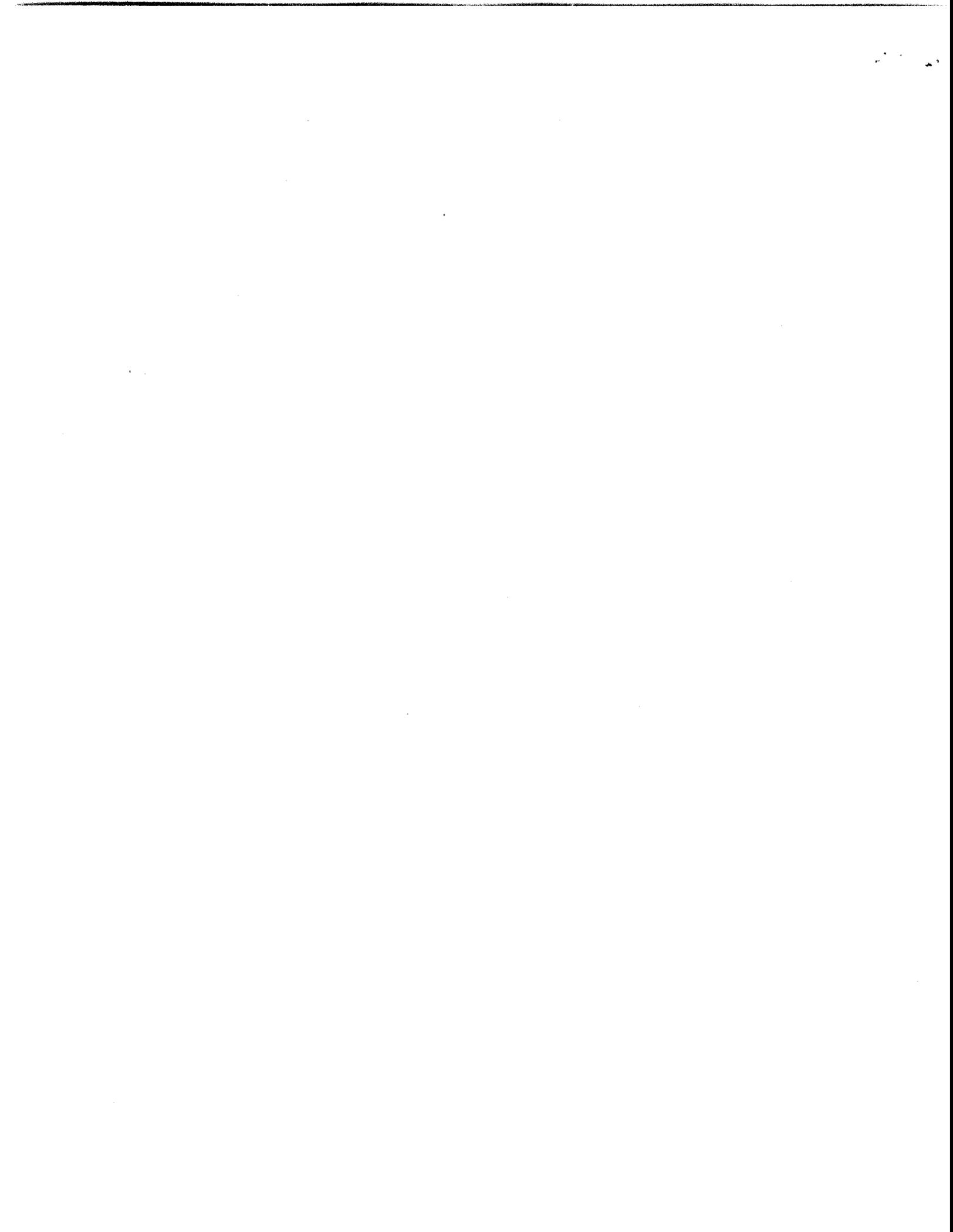
This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen husband 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 her husband will endure extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B*, dated December 7, 2007.

The record contains a brief from counsel and a statement from the applicant's husband. 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.-

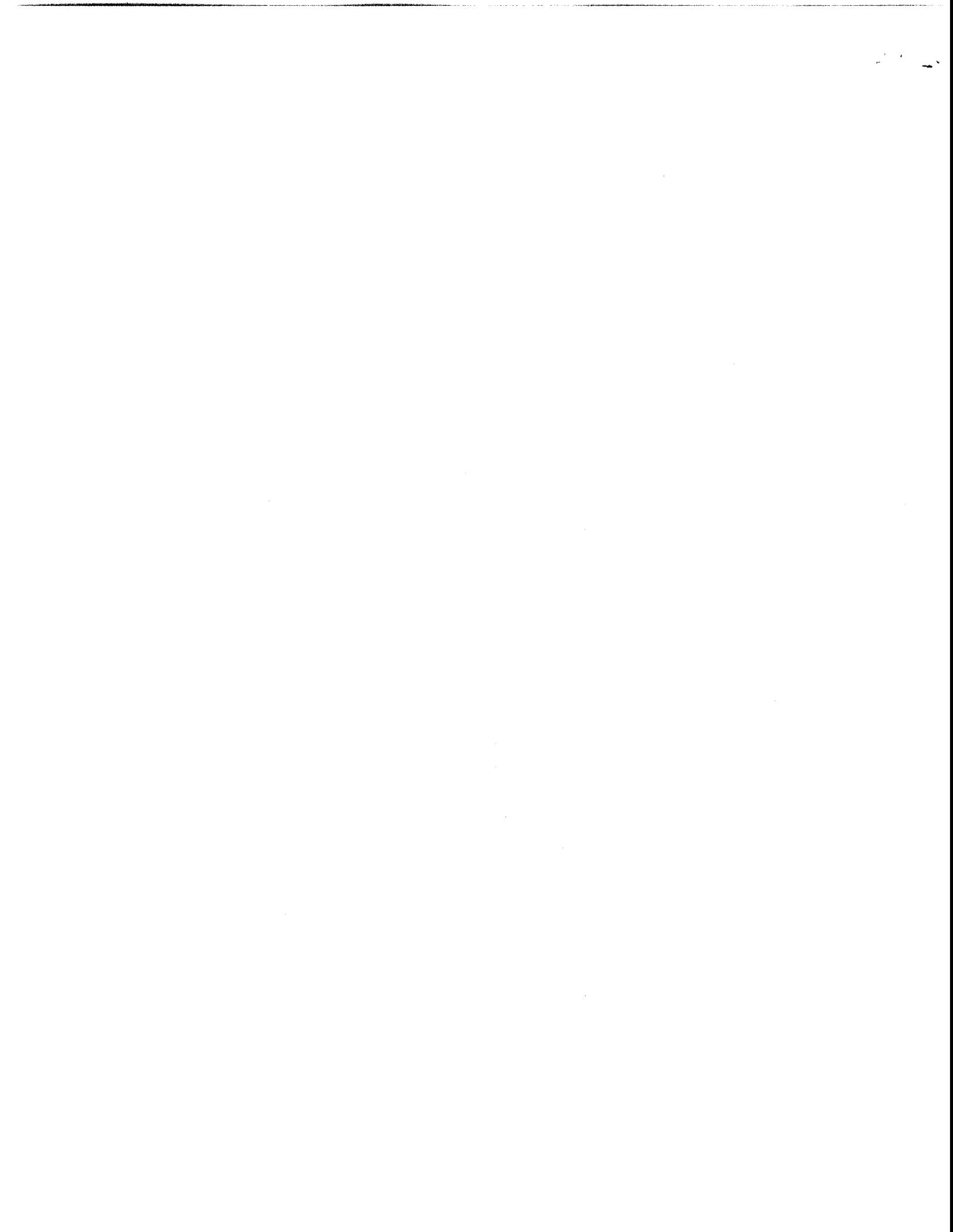
(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(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 September 2000. She remained until or about August 26, 2006. Accordingly, the applicant accrued over five years of unlawful presence in the United States. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. She 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 her last departure. The applicant does not contest her 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 husband stated that he feels emotionally devastated due to his separation from the applicant. *Statement from the Applicant's Husband*, submitted September 25, 2006. He explained that he will endure hardship due to the fact that he is the only one working and he must support himself in the United States and the applicant in Mexico. *Id.* at 1.

Counsel asserts that the applicant's husband was not permitted the opportunity to participate in the applicant's interview in connection with her Form I-601 application for a waiver, and that he had no choice but to provide a short, written statement in support of the waiver. *Brief from Counsel*, dated December 31, 2007. Counsel states that the applicant's husband will suffer extreme hardship if the present waiver application is denied, and that he is seeking medical help to assist him with his mental health. *Id.* at 2. Counsel requests that the applicant and her husband be granted a new interview. *Id.* at 2-3.

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is prohibited from entering the United States.



On appeal, counsel asserts that the applicant's husband was not afforded ample opportunity to participate in proceedings regarding the present waiver application, and that he was limited to a brief statement. However, the applicant's husband has had full opportunity to supplement the record on appeal, including the opportunity to submit a detailed statement, as well as supporting documentation such as financial records, medical records, and statements from others. While the applicant submits a brief from counsel, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As presently constituted, the single item of evidence on which the AAO may base the present decision remains the applicant's husband's one-paragraph statement originally submitted with the Form I-601 application for a waiver.

The applicant has not shown that her husband will suffer extreme hardship should he remain in the United States without the applicant. The applicant's husband indicated that he faces challenges providing economic support for the applicant while meeting his own needs in the United States. However, the applicant has not submitted any financial documentation for her husband such as evidence of his income or expenses. Thus, the AAO lacks adequate information or documentation in order to conclude that the applicant's husband is enduring economic hardship in the applicant's absence.

The applicant's husband expressed that he is experiencing emotional difficulty due to separation from the applicant. Counsel asserts that the applicant's husband is seeking mental health services, yet the applicant has not provided any medical documentation to support this assertion. The AAO acknowledges that the separation of spouses often results in significant emotional hardship. However, the applicant has not distinguished her husband'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 (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.

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 her last departure, she will no longer be inadmissible due to unlawful presence as of August 26, 2016. Thus, denial of the present waiver application does not eliminate the applicant's husband'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 husband, should he remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown that her husband will endure extreme hardship should she be prohibited from entering the United States and he remain.

The applicant has not asserted that her husband will suffer hardship should he join her in Mexico for the duration of her 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 husband 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 her husband will face challenges should he relocate to Mexico, she 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 her husband, 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 she merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

