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U.S. Citizenship
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HC H6

FILE:



Office: MEXICO CITY (CIUDAD JUAREZ) Date:

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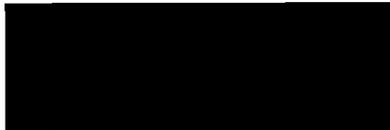
IN RE:



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 January 12, 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 letter from counsel; statements from the applicant and her husband; a letter from a physician regarding the applicant's daughter's health; copies of prescriptions for the applicant's daughter, and; a copy of the applicant's daughter's birth certificate. 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.-

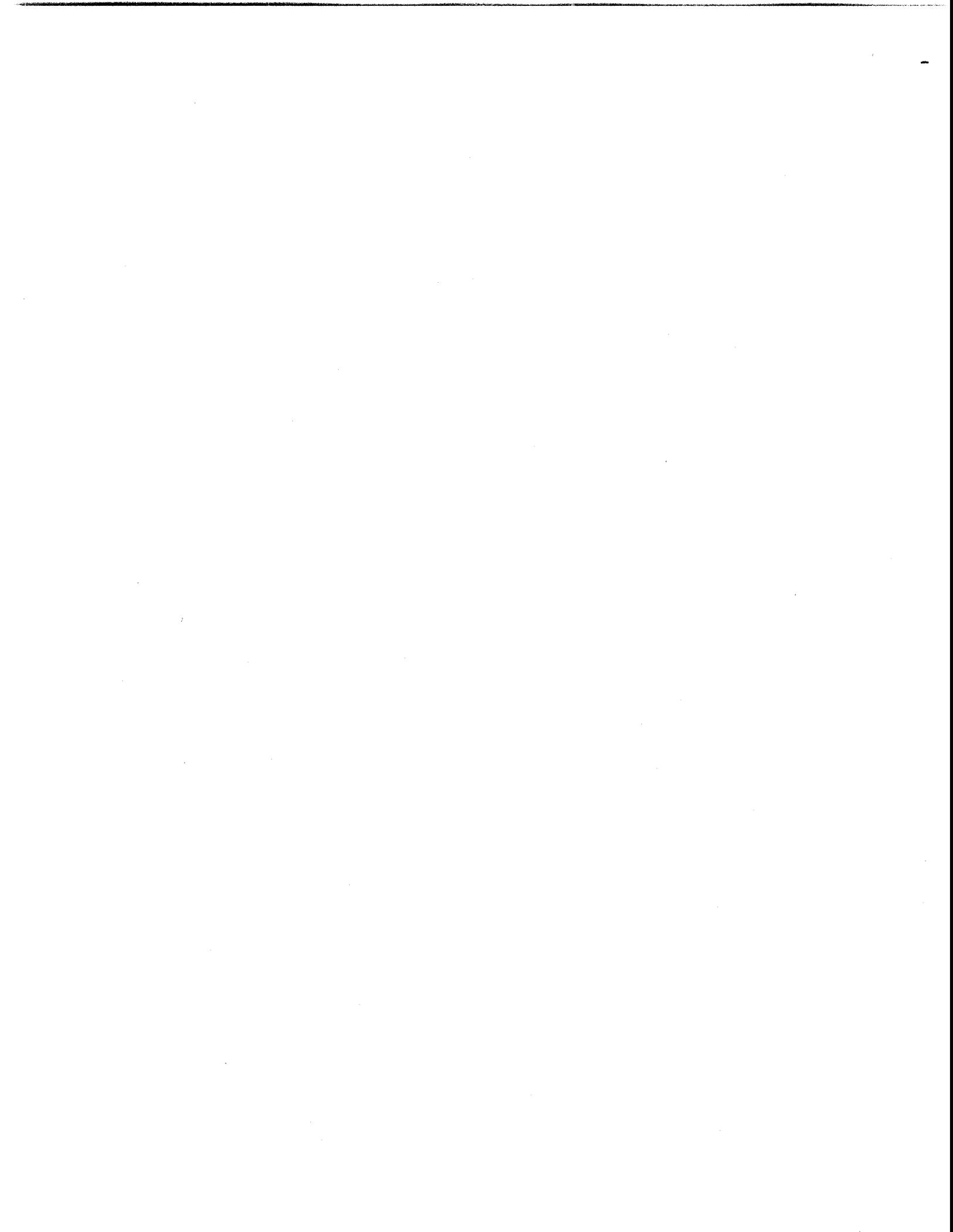
(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(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 July 2001. She remained until or about February 28, 2006. Accordingly, the applicant accrued over four 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 states that he has suffered mentally and physically since the applicant and his daughter departed for Mexico. *Statement from the Applicant's Husband*, dated February 8, 2007. He indicates that his daughter has endured continual illness in Mexico, and that the applicant has no medical insurance or means of obtaining medical insurance for their daughter. *Id.* at 1. He provides that he has had to pay significant bills out-of-pocket for doctor's visits, tests, and prescriptions for their daughter. *Id.* He states that his financial difficulty and concern for his daughter are causing extreme stress and mental anguish for him. *Id.* He asserts that he is often sick as a result which has caused him to miss work. *Id.* He indicates that he is suffering from depression and a lack of energy. *Id.* He states that he does not know how he will cope if the applicant is not permitted to return to the United States. *Id.*

The applicant's husband previously discussed the history of his relationship with the applicant. *Prior Statement from the Applicant's Husband*, dated June 10, 2005. He expressed that he is very close with the applicant and their daughter and he wishes to reside as a unified family in the United States.



Id. at 1-2. He stated that he wishes for their daughter to reside in the United States so that she can study, develop a profession, and learn about her country. *Id.* at 2.

The applicant states that her daughter has been sick and frequently under the care of a doctor since she arrived in Mexico. *Statement from the Applicant*, dated January 16, 2007. She explains that her daughter does not like Mexican food and becomes ill, develops fevers, and vomits often. *Id.* at 1. She provides that her daughter asks for her father often, and that she is enduring emotional hardship due to their family's separation. *Id.*

The applicant provides a letter from a physician, Dr. [REDACTED], regarding his daughter's health. Dr. [REDACTED] indicates that the applicant's daughter frequently presents "infectious situations involving upper respiratory airways, gastro-intestinal, fevers, and intolerance of an endless number of foods appropriate for her age." *Letter from Dr. [REDACTED]*, dated January 16, 2007. He provided that laboratory tests show infections in her throat and urinary tract. *Id.* at 1. He notes that she is responding satisfactorily to treatment. *Id.* He provides that, as of the date of his letter, the applicant's daughter had been sick for 12 days. *Id.* The applicant provides copies of prescriptions for her daughter dated January 5, March 4, April 17, and May 5, 2006.

Counsel asserts that the applicant has submitted sufficient evidence to show that her husband will suffer extreme hardship if she is not permitted to return to the United States for 10 years. *Letter from Counsel*, dated February 8, 2007. Counsel states that hardships to the applicant's daughter are relevant insofar as they affect the applicant's husband. *Id.* at 1. Counsel contends that the applicant's husband's suffering is over and above the economic and social disruptions involved in the removal of a family member. *Id.*

Upon review, the applicant has not shown that denial of the present waiver application will result in extreme hardship to her husband. The applicant has not asserted that her husband will suffer hardship should he relocate to Mexico. The AAO has carefully examined the letter from Dr. [REDACTED] regarding the applicant's daughter's health, and the record clearly shows that she has endured illness due to residing in Mexico. It is evident that the applicant's daughter's illness creates significant concern and emotional hardship for her husband, and that such concern would continue should their family reside in Mexico. However, the record does not show that the applicant's daughter faces untreatable conditions, and Dr. [REDACTED] noted that she is responding satisfactorily to treatment.

The United States Department of State indicates that "[a]dequate medical care can be found in major [Mexican] cities. Excellent health facilities are available in Mexico City, but training and availability of emergency responders may be below U.S. standards. Care in more remote areas is limited." *Country Specific Information: Mexico*, United States Department of State, dated June 30, 2009. The applicant has not stated or shown that her family would be compelled to reside in a location in Mexico where her daughter would lack access to medical care as needed.

In the absence of any assertions from the applicant regarding her husband's possible hardship in Mexico, the medical documentation for their daughter is not sufficient to show by a preponderance of the evidence that the applicant's husband would suffer extreme hardship should he join the applicant abroad. The AAO may not speculate as to the difficulties the applicant's husband may



suffer in Mexico. In proceedings regarding a 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.

It is further noted that the applicant will remain inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for 10 years from the date of her last departure, on or about February 26, 2006. Thus, she will no longer be inadmissible under section 212(a)(9)(B)(i)(II) of the Act as of February 26, 2016, in approximately six years. While the AAO acknowledges that this period of time is substantial, denial of the present waiver application does not eliminate the applicant's husband's ability to reside in the United States with a unified family for an indefinite period.

Based on the foregoing, the applicant has not shown that her husband will endure extreme hardship should he reside in Mexico for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The record shows that the applicant's husband will endure extreme hardship should he remain in the United States without the applicant and his daughter. The applicant's husband described in detail the history of his relationship with the applicant, and his statement supports that he is suffering significant emotional hardship due to separation from the applicant and their daughter. As discussed above, the applicant's daughter has experienced health problems in Mexico. While her conditions appear to be treatable, it is evident that the applicant's husband's psychological difficulty is compounded due to his daughter's health struggles. The fact that the applicant's husband faces separation from his young child at a time when she is ill constitutes an unusual circumstance not commonly faced by individuals who reside apart from their family due to inadmissibility.

The applicant's husband indicated that he is enduring financial hardship due to the need to fund his daughter's medical care in Mexico. The applicant has not provided any evidence to show her husband's income or expenses, or the charges her family incurred due to her daughter's health services, thus the AAO is unable to fully assess the impact her daughter's medical expenses have on her husband. Yet, the record shows that the applicant's daughter has received consistent medical care in Mexico, and that she has received prescription medication over a four month period. The United States Department of State indicates that "many Mexican facilities require payment 'up front' prior to performing a procedure," which supports that the applicant's daughter's medical care creates financial needs in Mexico that her family would likely not have with medical insurance in the United States. *Country Specific Information: Mexico*, United States Department of State, dated June 30, 2009.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that her husband will endure extreme hardship should he remain in the United States, separated from the applicant and their daughter.

However, an applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, and 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). As the applicant has not asserted or shown that her husband will endure hardship should he reside in Mexico, she has not shown that denial of the present waiver application "would result in extreme hardship," 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.

