

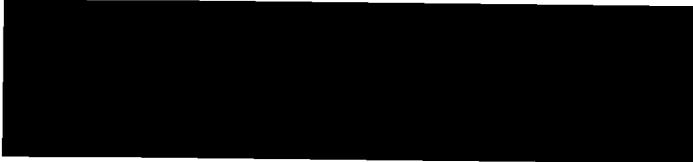
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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He #6

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **MAY 27 2010**

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

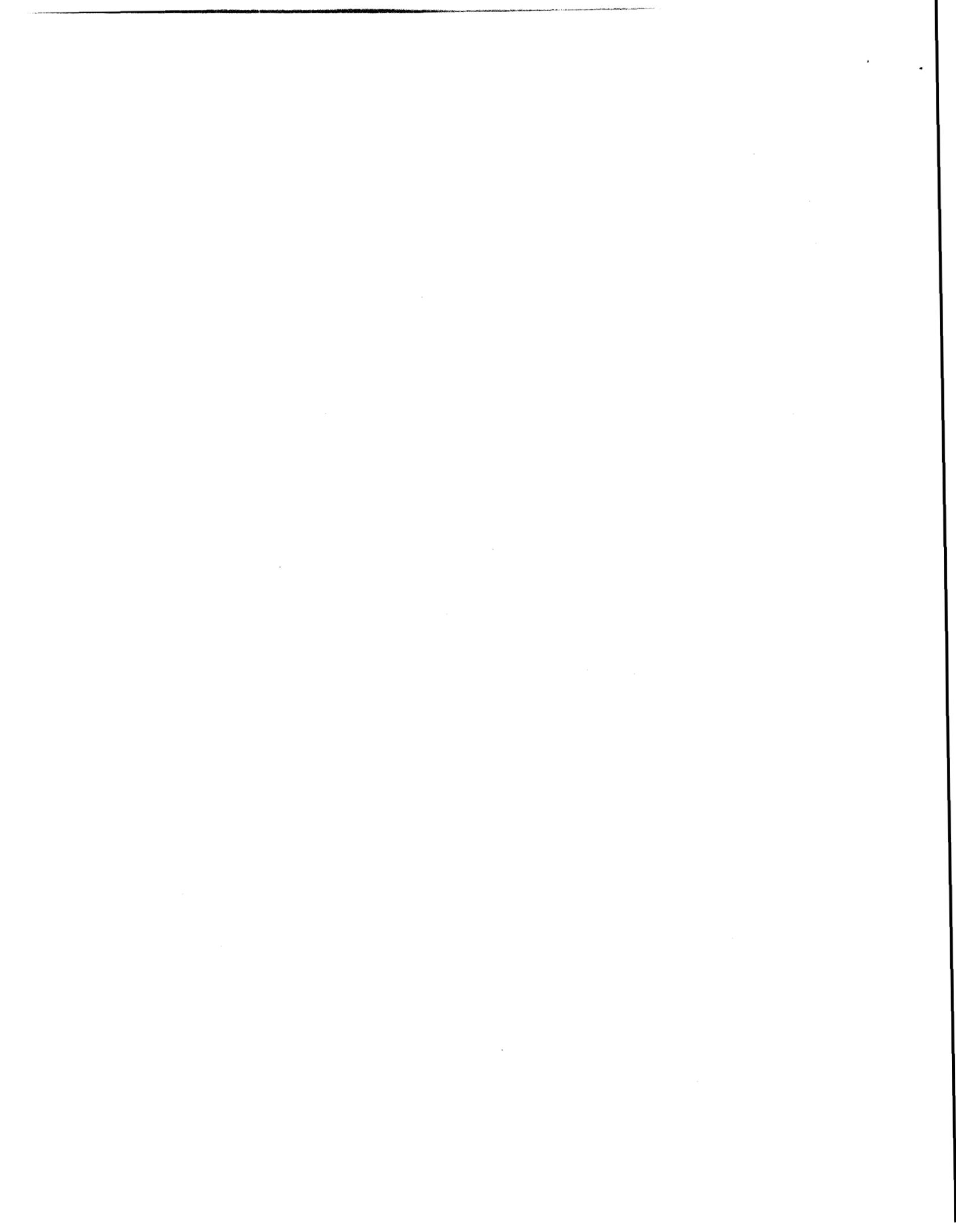
INSTRUCTIONS:

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).

Amy 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, and pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks waivers 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 October 15, 2007.

On appeal, the applicant's wife asserts that she will endure extreme hardship if the present waiver application is denied. *Statement from the Applicant's Wife*, dated November 5, 2007.

The record contains a statement from the applicant's wife; a letter from a physician regarding the applicant's wife's health, and; a mortgage statement for the applicant's wife. 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.-

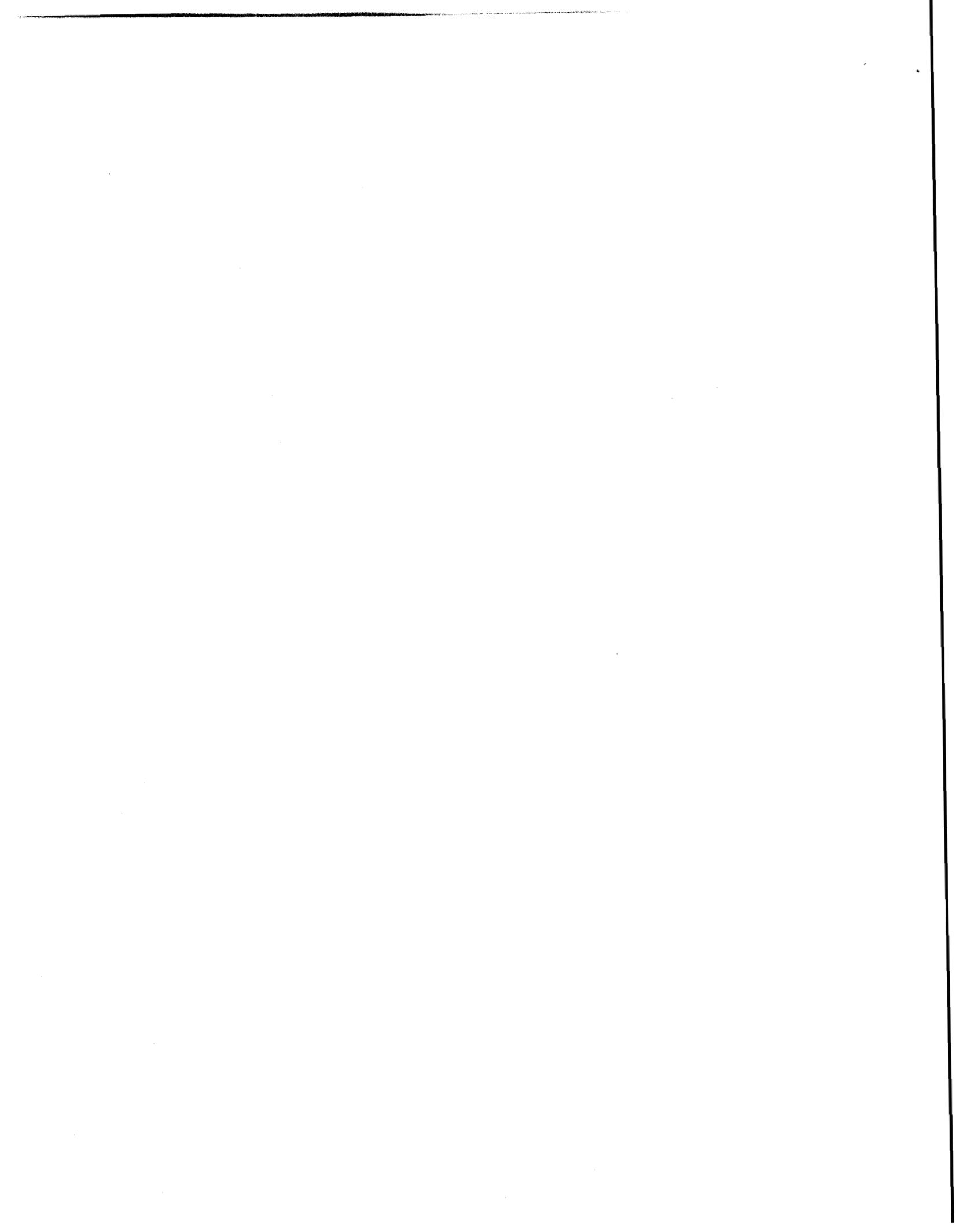
(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(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.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides, in pertinent part, that:

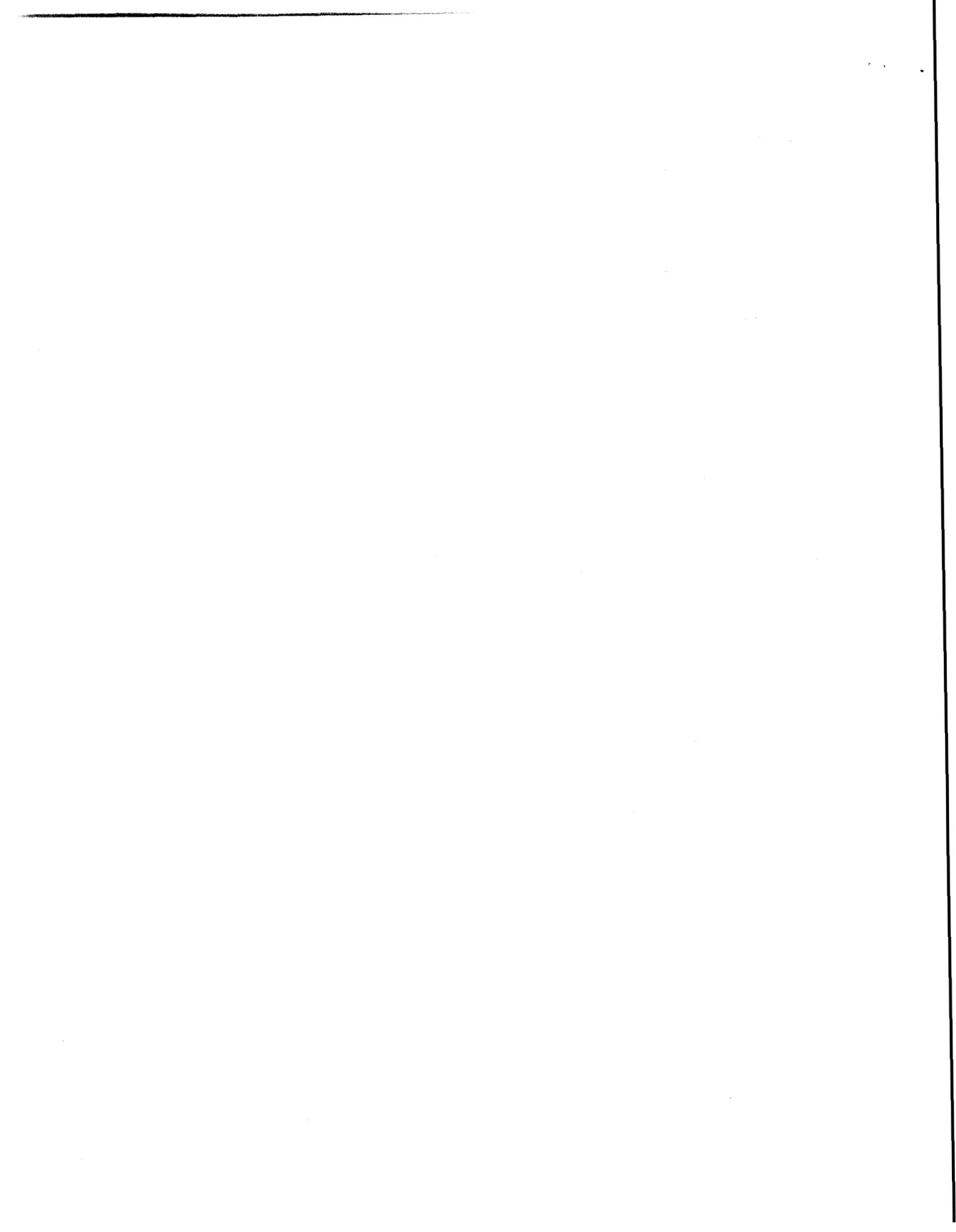
- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien[.]

According to the Consular Officer's interview notes, the applicant testified that in or about February 1999, the applicant attempted to enter the United States by presenting a counterfeit lawful permanent resident card. He was returned to Mexico. Accordingly, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States by willful misrepresentation.

The applicant entered the United States without inspection later the same day that he was returned to Mexico, in or about February 1999. He remained until or approximately July 2006. Thus, he accrued over seven 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 under section 212(a)(6)(C)(i) or 212(a)(9)(B)(i)(II) of the Act on appeal. Accordingly, he requires waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act.

Waivers under sections 212(a)(9)(B)(v) and 212(i) of the Act are dependent first upon a showing that a bar to admission 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) or 212(i) 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 states that she is suffering extreme hardship due to the applicant's absence from the United States. *Statement from the Applicant's Wife* at 1. She provides that she depends on the applicant on a daily basis in their home, and that he is not present to interact with their child and watch him grow up. *Id.*

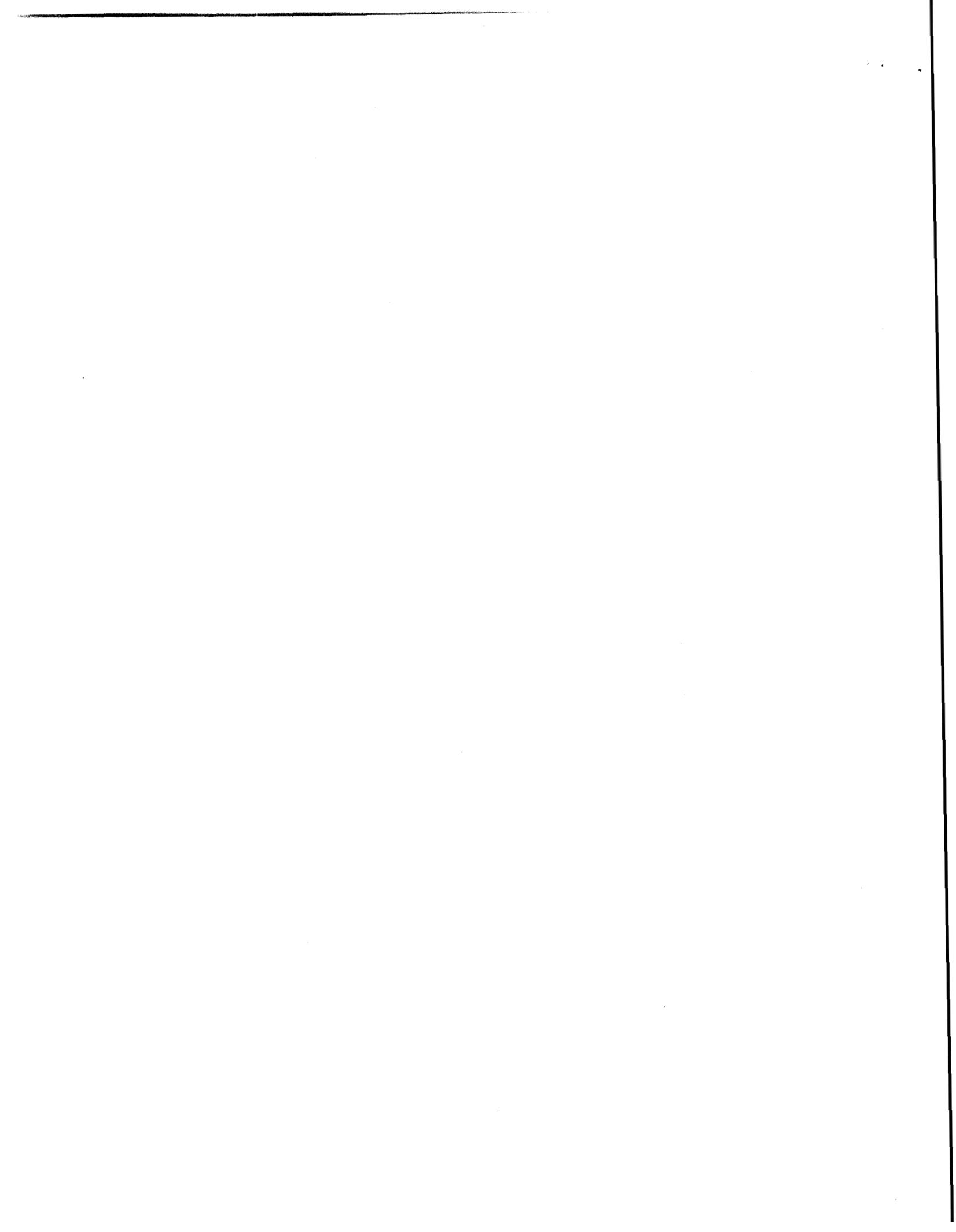
She indicates that she has been diagnosed with rheumatoid arthritis, and that it interferes with her ability to care for herself and her children. *Id.* She asserts that she requires assistance with common tasks such as combing her hair, dressing, cooking, and cleaning, and that the applicant previously provided help for her. *Id.* She states that she requires medications, injections, and constant observation by a doctor. *Id.* She contends that she will be unable to continue her medical insurance without the applicant, as she cannot afford the insurance provided through her employer. *Id.*

The applicant's wife expresses that she misses the applicant and that she is suffering emotional hardship due to being separated from him. *Id.* She states that she is seeing a doctor due to her depression. *Id.*

The applicant's wife states that she was unable to pay the two mortgages on their home and she lost it. *Id.* She indicated that she is only able to work part-time due to her disease, and thus she is experiencing financial difficulty. *Id.*

The applicant submits a letter from his wife's physician, Dr. [REDACTED] who attests that she has been seeing the applicant's wife for rheumatoid arthritis for several years as of the date of her letter, August 8, 2006. *Letter from Dr. [REDACTED]* dated August 8, 2006. Dr. [REDACTED] indicates that the applicant's wife is unable to fully care for herself without assistance, and that her joint disease requires that she has someone with her at home to help with tasks such as cooking, dressing, and driving. *Id.* at 1.

Upon review, the applicant has not shown that his wife will suffer extreme hardship should the present waiver application be denied. The applicant has not asserted that his wife will suffer hardship should she relocate to Mexico. The AAO has carefully examined the letter from Dr. [REDACTED] and it is evident that the applicant's wife would endure significant challenges relocating to Mexico due to her physical health and struggle with rheumatoid arthritis. Yet, in the absence of any assertions from the applicant regarding his wife's possible hardship in Mexico, the letter from Dr.



██████████ is not sufficient to show by a preponderance of the evidence that the applicant's wife would suffer extreme hardship should she join the applicant abroad. The applicant has not asserted or shown that his wife will lack access to medical care, physical assistance, or financial resources in Mexico, or that she will endure emotional challenges that rise to an extreme level. The AAO may not speculate as to the difficulties the applicant's wife may suffer in Mexico. In proceedings regarding a waiver of grounds of inadmissibility the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

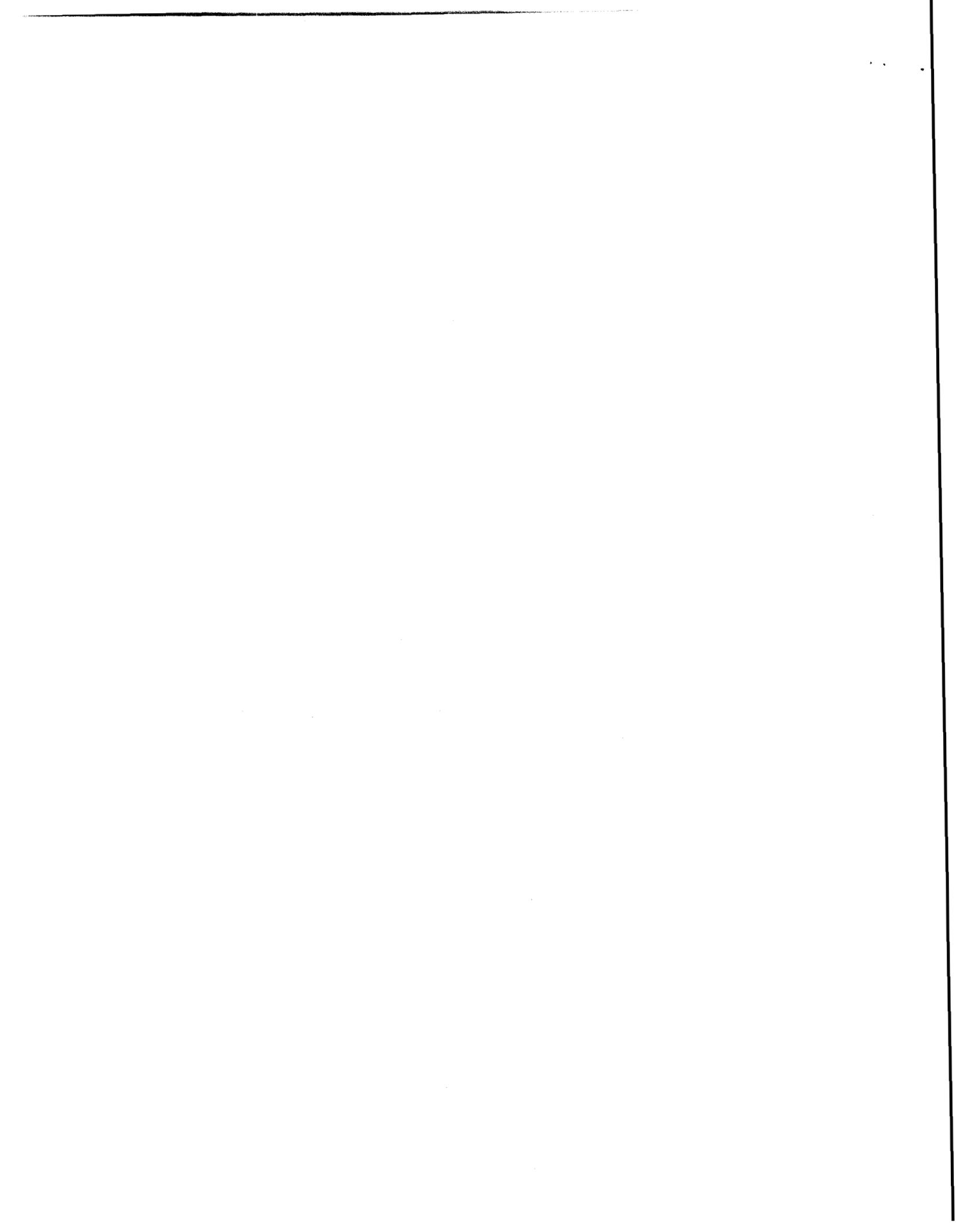
The applicant has established that his wife will suffer extreme hardship should she remain in the United States without him. The letter from Dr. ██████████ shows that the applicant's wife faces physical challenges due to rheumatoid arthritis, and that she requires assistance with common activities such as cooking, dressing, and driving, and that she is unable to fully care for herself. Thus, the record shows that she will face significant physical difficulty without the applicant residing in her household.

The applicant's wife indicated that she is enduring financial hardship due to the applicant's absence, in part due to the fact that her physical limitations affect her ability to engage in full-time employment. Dr. ██████████ letter supports that the applicant's wife is unable to perform all common functions with independence, which has an impact on her access to employment. The applicant provides a mortgage statement for his wife that reflects that she was one month behind on her payments as of February 12, 2007, which supports that she was enduring financial difficulty. It is evident that the applicant's presence and employment in the United States would be of assistance to his wife.

The applicant's wife expressed that she is enduring emotional hardship due to separation from the applicant. The AAO acknowledges that the separation of spouses often results in significant emotional difficulty. The record supports that the applicant's wife's emotional challenges are compounded due to her struggles with her physical health and financial concerns. It is further noted that the applicant will remain inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for an indefinite period should he fail to obtain a waiver of his inadmissibility. Thus, should the present application be denied, the applicant's wife will have no means to reside with a unified family in the United States. This circumstance will contribute to her psychological hardship.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that his wife will suffer extreme hardship should she remain in the United States without him.

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 his wife will suffer extreme hardship should she relocate to



Mexico, he has not established that denial of the present application "would result in extreme hardship" to his wife, as required for a waiver under sections 212(a)(9)(B)(v) and 212(i) 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.

