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

U.S. Citizenship and Immigration Services

[redacted]

H4

DATE: JUN 2 8 2012 OFFICE: ACCRA, GHANA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), and Application for Permission to Reapply for Admission After Deportation or Removal under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ghana who filed a Form I-821, Application for Temporary Protected Status, claiming to be a citizen of Liberia. The applicant's Form I-821 application was denied on October 8, 1992. The applicant was placed into immigration proceedings and failed to attend removal proceedings on January 31, 2007. Accordingly, the applicant was ordered deported in absentia on that same date. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willfully misrepresenting a material fact and to be inadmissible pursuant section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for seeking admission within ten years of his removal. The applicant is a beneficiary of an approved Petition for Alien Fiancé. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen fiancée and children.

The Field Office Director concluded that the applicant is statutorily inadmissible to the United States for five years due to his failure to attend removal proceedings, and denied the application accordingly. The applicant's Form I-212 application was also denied due to the denial of the applicant's Form I-601 application. *See Decision of the Field Office Director*, dated January 26, 2010.

The applicant asserts that his fiancée is suffering financial hardship and his entire family is suffering emotional hardship in his absence. The applicant further asserts that he has reformed since his prior misrepresentation.

Section 212(a)(6)(B) of the Act states:

> Failure to attend removal proceeding. -Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

The record reflects that the applicant entered the United States without admission or parole. On January 31, 2007, the applicant was ordered removed *in absentia* after he failed to appear at a removal hearing. The field office director used the October 13, 2009 date of the applicant's visa interview as the starting date of departure from the United States in the absence of other adequate proof. The applicant submitted a travel itinerary for a flight in his name from [redacted] on April 27, 2008. However, absent other supporting evidence, this evidence is insufficient to establish that the applicant departed from the United States on that date. It is noted that even if the applicant had departed from the United States on April 27, 2008, he would still be subject to the five year admission bar based on his failure to attend removal proceedings on January 31, 2007. The applicant is, therefore, inadmissible to the United States under section 212(a)(6)(B) of the Act for seeking admission to the United States within five years

of his departure.

There is no statutory waiver of available for the ground of inadmissibility arising under section 212(a)(6)(B) of the Act. However, an alien is not inadmissible under section 212(a)(6)(B) of the Act if the alien can establish that there was a "reasonable cause" for failure to attend his removal proceeding. [redacted]

The instant appeal relates to a Form I-601 application for a waiver of inadmissibility arising under sections 212(i) of the Act[1]. Inadmissibility under section 212(a)(6)(B) of the Act and the "reasonable cause" exception thereto, is not the subject of the Form I-601, and is not within the subject matter jurisdiction of the AAO to adjudicate with this appeal.

The AAO finds that the applicant's inadmissibility under section 212(a)(6)(B) of the Act can properly be used by the Field Office Director as a basis for denying the applicant's Form I-601, as no purpose is served in adjudicating a waiver application where a visa application cannot be approved because of a separate non-waivable ground of inadmissibility. The Field Office Director found that the applicant failed to present a "reasonable cause" for his failure to appear in removal proceedings.[2] Since the applicant did not satisfy the requirements of this exception, he remains inadmissible under section 212(a)(6)(B) of the Act. Because no purpose would be served at this time in adjudicating a waiver of the applicant's inadmissibility under section 212(i) of the Act, the applicant's Form I-601 was properly denied.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to overcome the basis of denial of his Form I-601 waiver application. The appeal will therefore be dismissed and the Form I-601 will be denied. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(6)(B) of the Act, no purpose would be served in granting the applicant's Form I-212.

ORDER: The appeal is dismissed.

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[1] It is noted that the applicant, on his Form I-290B, noted that his appeal was of the denial of his Form I-212. As the field office director's decision included a denial of both the applicant's Form I-212 and Form I-601 decisions, the applicant's appeal will be treated as an appeal of both decisions.

[2] The applicant states that he did not receive notice of his removal hearing at his address in Taneytown, Maryland. The AAO notes that the record contains a Form AR-11, *Alien's Change of Address Form,* dated February 15, 2005 reporting his change of address to [redacted] He was served with a Notice to Appear and notice of his removal hearing on January 3, 2007 by mail to his previous address in [redacted]