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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: AUG 0 8 2013 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), and 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 Guatemala. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more, and section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), as an alien who departed the country with a removal order pending. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130), who seeks permission to reapply for admission in order to join her U.S. citizen husband in the United States.

When considering the application, the service center director determined that the applicant was also inadmissible to the United States pursuant to section 212(a)(6)(B) of the Act for failing to attend removal proceedings and seeking admission to the United States within five years of her subsequent departure. *See Decision of Director,* October 29, 2012. The application was accordingly denied.

On appeal, counsel asserts that the applicant has demonstrated reasonable cause for her failure to attend removal proceedings. *Form I-290B. Notice of Appeal or Motion),* November 27, 2012, and *Appeal Brief*, November 27, 2012.

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 was apprehended on August 7, 1998 after entering the United States on July 5, 1998 without inspection, parole, or admission, and that she failed to attend removal proceedings on September 28, 1998 and October 26, 1998. On October 26, 1998, the applicant was ordered removed *in absentia* after she failed to appear at the second removal hearing. She remained in the United States until August 25, 2011, when she departed the country to apply for an immigrant visa. The applicant has not contested these facts. Rather, the applicant has asserted that she had reasonable cause for failing to attend her removal proceedings, and that she is not inadmissible under section 212(a)(6)(B) of the Act as a consequence.

The service center director denied the applicant's Form I-212 as a matter of discretion based on the denial of the Form I-601. In a separate decision, the AAO dismissed an appeal of the denial of the applicant's waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act in light of the service center director's determination that she is inadmissible under section 212(a)(6)(B) of the Act.

Section 212(a)(9)(A) provides, pertinent part:

> (i) Arriving Aliens. – Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal … is inadmissible.
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> (ii) Other Aliens. – Any alien not described in clause (i) who—
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> (I) has been ordered removed under section 240 or any other provision of law, or
> (II) departed the United States while an order of removal was outstanding,
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> and who seeks admission within 10 years of the date of such alien's departure or removal … is inadmissible.
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> (iii) Exception. – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

On October 26, 1998, an Immigration Judge ordered the applicant removed, and she departed the United States on August 25, 2011. She is thus inadmissible under section 212(a)(9)(A)(ii) of the Act and must obtain permission to reapply for admission. A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. *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 has been found inadmissible under section 212(a)(6)(B) of the Act, for which no waiver is available, no purpose would be served in granting the applicant's Form I-212.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.