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

U.S. Citizenship and Immigration Services

[redacted]

H6

Date: SEP 12 2012 Office: SAN SALVADOR, EL SALVADOR FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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 in accordance with the instructions on 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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States under section 212(a)(6)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(B), for failing to attend a removal proceeding; and 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 more than one year and seeking readmission within ten years of her last departure from the United States. The record indicates that the applicant is married to a U.S. citizen and the mother of a U.S. citizen child. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse and child.

The Field Office Director found that no waiver was available for the applicant's inadmissibility under section 212(a)(6)(B) of the Act, the applicant had failed to establish that extreme hardship would be imposed on her qualifying relative, and he denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 17, 2010. The AAO notes that the Field Office Director also denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) in the same decision.

On appeal, the applicant, through counsel, claims that the applicant was never notified of the immigration court proceedings, and the record establishes that the court never sent the notice to the applicant at the address on record. *Form I-290B, Notice of Appeal or Motion*, filed January 19, 2011. Therefore, counsel asserts that the applicant's failure to appear at her removal proceeding was reasonable. *Id.*

Section 212(a)(6)(B) of the Act provides, in pertinent part:

> (B) Failure to attend removal proceedings.—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 on or about August 3, 2005, the applicant entered the United States without inspection. She was apprehended on August 5, 2005, but was released on her own recognizance after being served a Form I-862, Notice to Appear (NTA). The applicant provided an address of "[redacted] Ft. Smith, AR 72904," which was listed on the NTA. On October 19, 2005, a Notice of Hearing in Removal Proceedings was sent to the applicant at the address on record. On December 21, 2005, an immigration judge ordered the applicant removed *in absentia* from the United States. On the same day, the immigration judge's order was mailed to the applicant at the address on record. On February 26, 2009, the applicant departed the United States. 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 her departure.

There is no statutory waiver 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 her removal proceeding. [redacted]

[redacted]

Counsel asserts that the applicant failed to attend her removal proceeding because she had no notice of the hearing; therefore, her failure to appear was reasonable. However, the instant appeal relates to a Form I-601 application for a waiver of inadmissibility arising under section 212(a)(9)(B)(v) of the Act. 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 the 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 her failure to appear in removal proceedings. Since the applicant did not satisfy the requirements of this exception, she remains inadmissible under section 212(a)(6)(B) of the Act until February 2014. Because no purpose would be served at this time in adjudicating a waiver of the applicant's inadmissibility under section 212(a)(9)(B)(v) of the Act, the applicant's Form I-601 was properly denied.

In proceedings for application for 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. The applicant has failed to overcome the basis of denial of her Form I-601 waiver application. The appeal will therefore be dismissed and the Form I-601 will be denied.

ORDER: The appeal is dismissed.