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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAR 15 2013 OFFICE: SAN SALVADOR, EL SALVADOR File:

IN RE: Applicant:

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), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 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,

Ron Rosenberg, Acting Chief
Administrative Appeals Office

DISCUSSION: The Form I-601 Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) were denied by the Field Office Director, San Salvador, El Salvador, and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador. She 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 in the United States for one year or more and seeking admission within 10 years of her last departure from the United States. The applicant also was found to be inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), as an alien previously removed. The applicant is the spouse of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative. 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) and an exception pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with her husband.

When considering the applicant's request for waiver and an exception to these grounds of inadmissibility, the Field Office 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 removal. *See Decision of the Field Office Director*, dated August 22, 2010. The applications were accordingly denied.

On appeal, the applicant, through her spouse, does not contest her inadmissibility. Form I-290B (Notice of Appeal or Motion), dated September 20, 2012.

The record reflects the applicant entered the United States without inspection on December 1, 2005. Shortly after her entry, U.S. immigration officials apprehended the applicant and placed her in removal proceedings, charging her with violating the provisions of section 212(a)(6)(A)(i) of the Act, § 1182(a)(6)(A)(i). The applicant failed to appear for her proceedings, and the Immigration Judge ordered her removal *in absentia* on August 15, 2008. The applicant, through counsel, filed a Motion to Reopen the proceedings on September 8, 2009, alleging she did not receive the Notice of Hearing and was never told she had to go to court. On October 5, 2009, the Immigration Judge denied the Motion to Reopen and ordered the applicant to be removed to El Salvador, in part, because the Immigration Judge determined the Notice of Hearing was mailed to the applicant's last known address. On November 2, 2009, the applicant appealed the Immigration Judge's decision. On October 22, 2010, U.S. immigration officials apprehended the applicant, and the Board of Immigration Appeals (BIA) dismissed her appeal on November 9, 2010.[1] The BIA's decision was the final administrative order, and the applicant was removed on December 1, 2010. The record

[1] The AAO notes the Field Office Director indicates the BIA dismissed the applicant's appeal on October 5, 2009.

reflects the applicant has remained outside the United States to date. The applicant has not contested these facts.

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.

There is no statutory waiver of available for the ground of inadmissibility arising under section 212(a)(6)(B) of the Act.

The object of a waiver application, in the context of an application for an immigrant visa filed at a consulate or embassy abroad, is to remove inadmissibility as a basis of ineligibility for that visa. An alien is not required to file a separate waiver application for each ground of inadmissibility, but rather one application that, if approved, extends to all inadmissibilities specified in the application. However, where an alien is subject to an inadmissibility that cannot be waived, approval of the waiver application would not have the intended effect. Thus, no purpose is served in adjudicating such a waiver application, and the U.S. Citizenship and Immigration Services (USCIS) may deny it for that reason as a matter of discretion. *Cf. Matter of J- F- D-*, 10 I&N Dec. 694 (Reg. Comm. 1963).

As the applicant is clearly inadmissible under section 212(a)(6)(B) of the Act, for which there is no waiver, the AAO finds that no purpose is served in adjudicating the applicant's application for a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act.

The AAO notes that the Field Office Director denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *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.

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 her Form I-601 waiver application.

ORDER: The appeal is dismissed.