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

U.S. Citizenship and Immigration Services

[redacted]

H2

DATE: MAY 30 2012 OFFICE: ACCRA, GHANA FILE [redacted]

IN RE: [redacted]

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Accra, Ghana, 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 Niger. He was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for his conviction of a crime involving moral turpitude; section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for having been ordered removed; and section 212(a)(6)(B), 8 U.S.C. §1182(a)(6)(B), for failing to attend his removal proceedings without reasonable cause.[1] The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act. The applicant also has filed an application for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

In a decision dated December 11, 2009, the director denied the waiver application based on a finding that pursuant to section 212(a)(6)(B) of the Act, the applicant was statutorily inadmissible to the United States for five years due to his failure to attend removal proceedings. The director did not address the applicant's inadmissibility under section 212(a)(2)(A)(ii)(II) of the Act. Upon review of the record, the AAO finds that the applicant is not inadmissible under section 212(a)(2)(A)(ii)(II) of the Act.[2] The director also denied the Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212) as a matter of discretion, stating that it would serve no purpose because he is not eligible for a waiver.

On appeal, the applicant asserts that evidence establishes he had reasonable cause for failing to attend his removal proceedings, and that he should not be found inadmissible under section 212(a)(6)(B) of the Act. *Form I-290B, Notice of Appeal or Motion*, dated January 8, 2010.

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

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[1] The director also considered the applicant's inadmissibility under section 212(a)(9)(B)(i) of the Act. The director determined the applicant was present in the United States for the duration of his student status, from the date of his admission in June 2000 until he was ordered removed as a status violator on March 21, 2007. Because he was not unlawfully present for one year or more before his removal, the director found that the applicant was not inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and he did not require a waiver of inadmissibility under section 212(a)(9)(B)(v). *See Memo. from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, "Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act,"* dated May 6, 2009.

[2] The applicant was convicted on September 27, 2005, of the offense of False Pretenses, under $200, a crime involving moral turpitude, in violation of section 750.218(2) of the Michigan Penal Code. He was not sentenced to a prison term; he was sentenced to pay fines and costs. The maximum term of imprisonment for a conviction for False Pretenses, under $200, is 93 days. Because the applicant committed only one crime, was not sentenced to a term of imprisonment in excess of six months, and the maximum penalty possible does not exceed imprisonment for one year, the offense falls within the exception under section 212(a)(2)(A)(ii)(II) of the Act. A waiver under section 212(h) of the Act is not necessary.

> 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 the applicant was admitted into the United States as a nonimmigrant student in June 2000. He was ordered removed *in absentia* on March 21, 2007, after he failed to appear for his removal proceedings. The applicant does not contest these facts on appeal. The applicant was removed from the United States on September 19, 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 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 he or she can establish that there was a reasonable cause for failure to attend the removal proceeding. *See* Memo. from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators* (March 3, 2009).

The applicant asserts that he has demonstrated reasonable cause for his failure to attend his removal proceedings. However, the instant appeal relates to a Form I-601 application for a waiver or inadmissibility arising under section 212(h) of the Act. Inadmissibility under section 212(a)(6)(B) of the Act and the "reasonable cause" exception thereto, is not the subject of a 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 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 record reflects that the director determined the applicant failed to present a reasonable cause for his failure to appear in removal proceedings. Since the applicant did not satisfy the requirements of this exception, he remains statutorily inadmissible under section 212(a)(6)(B) of the Act until September 20, 2012.

The director denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, in the same decision. It is noted that an application for permission to reapply for admission is properly denied, in the exercise of discretion, when an alien is mandatorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the application. *See Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964). As the applicant is inadmissible under section 212(a)(6)(B) of the Act, no purpose would be served in granting his 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 his Form I-601 waiver application. The appeal will therefore be dismissed and the Form I-601 will be denied.

ORDER: The appeal is dismissed.