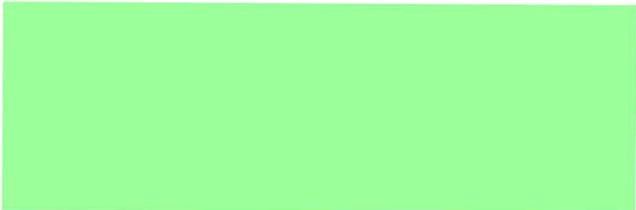


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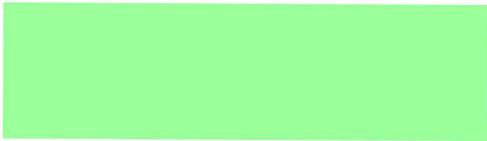
DATE: **JAN 07 2013** Office: GUATEMALA CITY



IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



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 request 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,

f.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Guatemala who was found to be inadmissible to the United States under 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 more than one year and seeking readmission within 10 years of his last departure from the United States, section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving moral turpitude, and section 212(a)(3)(E)(iii) of the Act, 8 U.S.C. § 1182(a)(3)(E)(iii), for participating in acts of torture or extrajudicial killings. The applicant seeks waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(h) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(h), in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) based on a finding that under section 212(a)(3)(E)(iii) of the Act the applicant is statutorily inadmissible to the United States and ineligible for any waiver of inadmissibility. *See Decision of Field Office Director*, dated November 7, 2011.

On appeal, counsel asserts that the applicant is not inadmissible pursuant to section 212(a)(3)(E)(iii) of the Act. Counsel states that the applicant was only a civilian military commissioner and that there is insufficient evidence to establish that he participated in activities which would make him inadmissible under section 212(a)(3)(E)(iii) of the Act.

The record includes, but is not limited to, statements from the applicant and his qualifying spouse and a letter from the qualifying spouse's doctor. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(3)(E) of the Act provides, in pertinent part:

(iii) Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of—

- (I) any act of torture, as defined in section 2340 of title 18, United States Code; or
- (II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note), is inadmissible.

There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(3)(E)(iii) of the Act. Counsel asserts that the evidence is insufficient to establish that the applicant participated in torture or extrajudicial killing. However, the instant appeal relates to a Form I-601 application for a waiver of inadmissibility arising under sections 212(a)(9)(B)(i)(II) and 212(a)(2)(A)(i)(II) of the Act. Inadmissibility under section 212(a)(3)(E)(iii) of the Act is not

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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)(3)(E)(iii) 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 due to a separate non-waivable ground of inadmissibility. The Field Office Director found that the applicant's statement provided enough evidence to indicate that he had participated in torture or extrajudicial killing in Guatemala. The AAO lacks jurisdiction to reconsider the Field Office Director's decision regarding the applicant's inadmissibility under section 212(a)(3)(E)(iii) of the Act. Because no purpose would be served in adjudicating a waiver of the applicant's inadmissibility under sections 212(a)(9)(B)(i)(II) and 212(a)(2)(A)(i)(II) of the Act, the applicant's Form I-601 was properly denied. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.