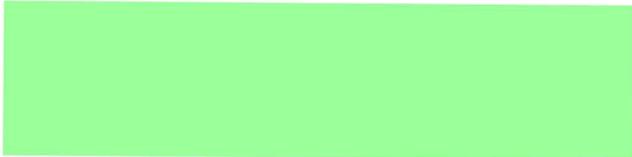




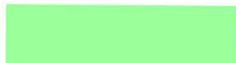
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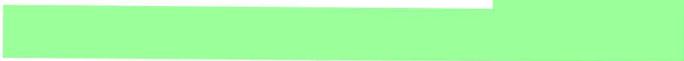


Date: JUN 21 2013

Office: TEGUCIGALPA

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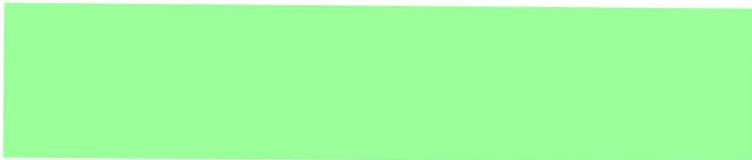
IN RE:

Applicant: 

APPLICATION:

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

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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded.

The applicant is a native and citizen of Honduras who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 admission within 10 years of her last departure. The applicant was further found to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude. The applicant is the spouse of a U.S. citizen. On November 2, 2011, she filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant seeks waivers of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(h) and (a)(9)(B)(v), in order to reside in the United States with her U.S. citizen husband.

In a decision dated May 3, 2012, the field office director concluded that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility and denied the Form I-601 application accordingly.

On appeal, counsel for the applicant asserts that the director erred in finding that she has not established extreme hardship to her qualifying relative. Counsel contends that the evidence outlining adverse country conditions in Honduras, as well as evidence of financial and emotional difficulties demonstrates extreme hardship to the applicant's qualifying relative.

The record includes, but is not limited to: the applicant's appeal brief; an affidavit by the applicant's husband; the applicant's affidavit; copies of income tax returns; pay stubs; copies of bank statements; money gram receipts; country conditions documentation; a marriage certificate; medical documentation; employment verification letters; utility bills; documentation demonstrating that the applicant's spouse is the legal guardian of her son from a prior relationship; copies of guardianship filings; copies of divorce decrees; copies of collection notices and bills; country conditions documentation; family photographs; and documentation concerning the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(B) Aliens Unlawfully Present.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

The record reflects that the applicant entered the United States without inspection on July 23, 2001, and remained in the United States until December 19, 2010, when she complied with a voluntary departure order issued by an immigration judge in Atlanta, Georgia. The applicant was apprehended by Border Patrol in [REDACTED], Texas on July 23, 2001 and was issued a Notice to Appear and placed in removal proceedings. On September 21, 2001, the applicant was ordered removed in absentia after she failed to appear at the immigration hearing. On April 21, 2009, the applicant married [REDACTED]; subsequently filed a Petition for Alien Relative, Form I-130 on the applicant's behalf. This application was approved on July 27, 2010. On May 6, 2009, the applicant filed a motion to reopen removal proceedings requesting voluntary departure. On August 20, 2010, Immigration Judge [REDACTED] granted the applicant's request for voluntary departure. The applicant voluntarily departed the United States to Honduras on December 19, 2010

Here, the AAO finds that the applicant accrued unlawful presence in the United States from July 2001 until her departure in 2010. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of her 2010 departure, she is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility on appeal.

The record also indicates that the applicant was convicted in the Superior Court of [REDACTED] Georgia on January 10, 2003 of one count of theft by shoplifting in violation of section 16-8-14 of the Georgia Code. The maximum punishment for this offense, a first degree misdemeanor, is a definite term of imprisonment not exceeding one year. *See* O.C.G.A. § 17-10-3. The applicant was placed on probation for a period of 12 months and was ordered to pay a \$500 fine. In the event that the AAO found this to be a crime involving moral turpitude, it would find the petty offense exception in section 212(a)(2)(A)(ii)(II) of the Act to apply, as the maximum sentence for the crime does not exceed one year and she was not sentenced to a term of imprisonment in excess of six months.¹

Beyond the decision of the director, it appears that the applicant may also be inadmissible under section 212(a)(6)(B), for which no waiver is available.

¹ A review of the record indicates that, following her conviction for theft by shoplifting, the applicant was arrested on February 6, 2003 for the offenses of misdemeanor battery and cruelty to children. The record reflects that the state prosecutor dismissed the charges without seeking an indictment or filing an accusation and, therefore, will not be considered.

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.

Based on the applicant's failure to attend her hearing on September 21, 2001, followed by departure on December 19, 2010, it appears that she may be inadmissible under section 212(a)(6)(B) of the Act.

There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(6)(B) of the Act. However, as noted in the statute, an alien is not inadmissible under section 212(a)(6)(B) of the Act if the alien can establish that there was reasonable cause for failure to attend her removal proceeding. There is no indication in the record that the applicant's inadmissibility under section 212(a)(6)(B), or possible reasonable cause for failure to appear, has been specifically examined.

As there is no waiver of this ground of inadmissibility, the AAO lacks jurisdiction to review the issue of reasonable cause. The matter is, therefore, remanded for a determination on the applicant's inadmissibility under section 212(a)(6)(B) of the Act. If the applicant is found to be inadmissible under section 212(a)(6)(B) of the Act, a new decision on the waiver application shall be rendered denying the waiver application, as no purpose would be served in granting a waiver to an applicant who has other grounds of inadmissibility that cannot be waived. If the waiver application is denied for this reason no further action will be required of the AAO. If, however, the applicant is not found to be inadmissible under section 212(a)(6)(B) of the Act, the matter shall be returned to the AAO in order to adjudicate the present appeal.

ORDER: The appeal is remanded for further proceedings consistent with this decision.