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]

#4

Date: DEC 2 0 2012 Office: SAN SALVADOR, EL SALVADOR [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to sections 212(a)(6)(B), 212(a)(9)(A) and (B) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(B) , 1182(a)(9)(A) and (B).

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, or a request for a fee waiver. 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 waiver application was denied by the Acting 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 ordered removed from the United States *in absentia* in 2007 and found to be inadmissible to the United States pursuant to sections 212(a)(6)(B), (a)(9)(A)(i) and (B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(B), (a)(9)(A)(i) and (B)(i)(II), for having failed to attend her removal proceedings, having departed the United States while an order of removal was outstanding, and having been unlawfully present in the United States for more than one year. The applicant is the spouse of a U.S. citizen and seeks a waiver of inadmissibility in order to return to the United States.

The Field Office Director noted that the applicant was ordered removed *in absentia* in 2007 and departed the United States in 2010. The director therefore concluded that the applicant was ineligible to apply for admission to the United States before 2015, and that no purpose would be served in adjudicating her application for a waiver of the unlawful presence ground of inadmissibility. The director also noted that the applicant's request for a waiver would be denied as a matter of discretion.

On appeal, the applicant maintains that her inadmissibility is resulting in extreme hardship to her U.S. citizen husband. See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion.

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

> (B) 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 in inadmissible.

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

> (A) Certain alien previously removed.-
>
> (i) Arriving aliens. Any alien who has been ordered removed under Section 235(b)(1) or at the end of proceedings under Section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens. Any alien . . . who

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal . . . is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

Section 212(a)(9)(B) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

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

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(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.

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(v) Waiver.- The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

In the present case, the record indicates that the applicant entered the United States in 2006 and was apprehended and subsequently placed in removal proceedings. The applicant failed to

appear for her immigration hearing. In 2007, the immigration judge entered an *in absentia* order of removal in the applicant's case. The applicant departed the United States in 2010.

The applicant is therefore inadmissible, as charged, under sections 212(a)(6)(B), (a)(9)(A)(i) and (B)(i)(II) of the Act for having failed to attend her removal proceedings, for seeking admission within five years of her removal and for having been unlawfully present in the United States for more than one year.

As the applicant continues to be inadmissible to the United States under sections 212(a)(6)(B) and (a)(9)(A)(i) of the Act, and is subject to no exception therefrom, the AAO finds it unnecessary to determine whether she would qualify for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act at this time or whether a consent to reapply for admission under section 212(a)(9)(A) following her departure is warranted.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.