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



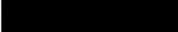
U.S. Citizenship  
and Immigration  
Services



H4

DATE: JUN 25 2012

OFFICE: SAN SALVADOR

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v); Application for Permission to Reapply for Admission into the United States after Deportation or Removal filed under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

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,

Perry Rhew, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the 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 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 readmission within 10 years of departure from the United States. The applicant was also found to be inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), due to the *in absentia* removal order entered in her case on July 30, 2002 by the Immigration Court in Arlington, Virginia. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her husband. She also seeks Permission to Reapply for Admission into the United States after Deportation or Removal pursuant to Section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

In a decision dated April 6, 2010, the Field Office Director concluded that the applicant did not establish that her qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility. In the same decision, the Field Office Director also denied the accompanying Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, as a matter of discretion.

On appeal, the applicant states that her U.S. citizen spouse will suffer extreme hardship as a result of her inadmissibility. She does not contest her inadmissibility on appeal.

In support of the waiver application, the record includes, but is not limited to, a statement from the applicant, a statement from the applicant's spouse, biographical information for the applicant and her spouse, and documentation concerning the applicant's immigration 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 was reviewed and considered in rendering a decision on the appeal.

The applicant was found inadmissible under Section 212(a)(9) of the Act, which provides, in pertinent part, that:

(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.

(v) Waiver.-The Attorney General 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 Attorney General 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 Attorney General regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection on June 27, 2001, was apprehended by immigration authorities on June 29, 2001, and placed into removal proceedings. The applicant was ordered removed *in absentia* by the Immigration Judge in Arlington, Virginia on July 30, 2002, but remained in the United States until her departure at her own expense on November 25, 2008. As a result of the applicant's unlawful presence in the United States from June 27, 2001 until November 25, 2008, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. The applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is in effect for 10 years after the date of her last departure from the United States. The applicant has not disputed this finding of inadmissibility.

As a result of her removal order, the applicant was also found to be inadmissible under section 212(a)(9)(A)(ii) of the Act. Section 212(a)(9) of the Act states in pertinent part:

- (A) Certain aliens previously removed.-
- (ii) Other aliens.-Any alien not described in clause (i) 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 (or within 20 years of such date 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.
- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The applicant would be eligible to apply for a waiver her inadmissibility under section 212(a)(9)(B)(v) of the Act, as the spouse of a United States citizen, and would be eligible to apply for permission to reapply for admission after removal under 212(a)(9)(A)(iii), but for the fact that she failed to attend removal proceedings in her case on July 30, 2002.

As a result of the applicant's failure to attend her removal proceedings, she is also inadmissible under section 212(a)(6)(B) of the Act, which 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 is inadmissible.

Based on the *in absentia* removal order, the applicant is inadmissible to the United States and not eligible for a waiver for a period of five years from the date of her departure from the United States. There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(6)(B) of the Act. As a result of the applicant's ineligibility for a waiver of this ground of inadmissibility until November 25, 2013, the AAO finds that no purpose would be served in adjudicating the applicant's appeal.

Because no purpose would be served at this time in adjudicating a waiver of the applicant's inadmissibility under section 212(a)(9)(B)(v) of the Act (Form I-601) or her application for permission to reapply after deportation or removal (Form I-212), the applicant's Form I-601 and Form I-212 were properly denied. The AAO notes that the Field Office Director denied the applications on this case based on the applicant's failure to establish extreme hardship to her U.S. citizen spouse, however we do not reach the merits of that decision as a result of the applicant's ineligibility for a waiver of her inadmissibility under section 212(a)(6)(B) of the Act for a period of five years from her departure from the United States.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, and permission to reapply under section 212(a)(9)(A)(iii) 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.