

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



H5



FILE: [REDACTED] Office: GUATEMALA CITY

Date: APR 06 2011

IN RE: Applicant: [REDACTED]

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

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, Guatemala City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guatemala who was found to be inadmissible to the United States pursuant to: section 212(a)(9)(B)(i)(II) of 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; section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit; and section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend removal proceedings. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and child in the United States.

The field office director found that there is no waiver available for a finding of inadmissibility under section 212(a)(6)(B) of the Act and denied the application accordingly. *Decision of the Field Office Director*, dated September 26, 2008.

On appeal, counsel contends that the applicant is eligible for a waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act. With respect to section 212(a)(6)(B) of the Act, counsel cites the Immigration and Nationality Act of 1952 and contends the applicant is eligible to apply for permission to reapply for admission to the United States. Counsel contends that it is well established that an Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) is more easily obtained than a waiver of inadmissibility. According to counsel, the applicant has established that his Form I-212 warrants a favorable exercise of discretion. In addition, counsel contends the applicant established that his wife would suffer extreme emotional and financial hardship if his waiver application were denied, particularly considering her health problems, work obligations, and family obligations to her minor children. *Memorandum of Law*, undated.

The record contains, *inter alia*: a marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on October 2, 2003; a copy of the couple's U.S. citizen child's birth certificate; an affidavit and a letter from [REDACTED]; a psychological evaluation of [REDACTED]; a psychological evaluation of the applicant; copies of [REDACTED] medical records; an immigration judge's decision and a copy of the Board of Immigration Appeals' decision; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Guatemala; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

- (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 [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 Attorney General [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.

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

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

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 of deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

There is no waiver available for a finding of inadmissibility under section 212(a)(6)(B) of the Act.

In this case, the record shows, and counsel concedes, that the applicant last entered the United States in March 1996 using a photo-substituted passport and that he had previously entered the United States on two other occasions using the same passport. *Memorandum of Law, supra*. The record contains a copy of a Notice to Appear, placing the applicant in removal proceedings, and ordering the applicant to appear before an immigration judge on June 1, 1999. The record shows that the applicant failed to appear before the immigration judge on June 1, 1999, and was ordered removed *in absentia* on the same day. *Decision of the Immigration Judge*, dated June 1, 1999. Furthermore, the record shows that more than five years later, the applicant moved to reopen his case based on his marriage to a U.S. citizen. The immigration judge denied the motion, finding it untimely. *Decision on a Motion to Reopen*, dated March 17, 2006. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals, which dismissed the appeal on August 29, 2006. *Decision of the Board of Immigration Appeals*, dated August 29, 2006. The Board found that the applicant did not explain the reason for his failure to appear before the immigration judge in 1999, did not claim that he did not receive notice of his hearing, and did not offer any evidence that he was prevented from appearing due to exceptional circumstances. *Id.* The applicant remained in the United States until his removal on September 2, 2006.

Therefore, the record shows that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act; section 212(a)(6)(C)(i) of the Act, and section 212(a)(6)(B) of the Act. Although the applicant is eligible to apply for a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, section 212(a)(6)(B) of the Act clearly states that the applicant remains inadmissible to the United States for five years after the alien's departure or removal. In this case, the applicant was removed from the United States on September 2, 2006. He is ineligible to apply for admission to the United States until September 2, 2011.

Regarding counsel's contention that the applicant is eligible to apply for permission to reapply for admission to the United States, the AAO notes that counsel's brief cites to section 212(a)(6)(B) of the Act as it existed in 1952. *Memorandum of Law* at 4, *supra* (addressing excludability for any alien who, *inter alia*, has been arrested and deported, fallen into distress, or removed as an enemy alien). Counsel does not address the applicant's inadmissibility under the current version of section 212(a)(6)(B) of the Act, which addresses the failure to attend a removal proceeding. As stated above, there is no waiver for a finding of inadmissibility under the current version of section 212(a)(6)(B) of the Act.

Counsel is correct insofar as the applicant must reapply for admission to the United States because he was removed. Section 212(a)(9)(A) of the Act addresses aliens previously removed and, specifically, section 212(a)(9)(A)(iii) of the Act addresses an alien's application for admission to the United States. This inadmissibility can be cured by filing a Form I-212, Application for Permission to Reapply for Admission (Form I-212). Neither Form I-212 nor Form I-601 can cure a finding of inadmissibility under section 212(a)(6)(B) of the Act. As the applicant is statutorily ineligible to enter the United States, no purpose would be served in adjudicating the Form I-601 or the Form I-212.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he has established the existence of extreme hardship to a qualifying relative or whether he merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.