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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

[redacted]

FILE: [redacted] Office: ATHENS, GREECE Date JAN 31 2011

IN RE: [redacted]

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

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 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,

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Athens, Greece. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, , is a native and citizen of Syria. He 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 more than one year and seeking admission within 10 years of his last departure from the United States; section 212(a)(6)(C)(i) of the Act, 8 U.S.C. 1182(a)(6)(C)(i), for having procured admission into the United States by willful misrepresentation; section 212(a)(9)(A) of the Act; 8 U.S.C. § 1182(a)(9)(A), as an alien previously removed; and section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend removal proceedings and seeking admission to the United States within 5 years of his subsequent removal. The applicant seeks waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), respectively. The applicant has also filed an application for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

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)(6)(B) of the Act the applicant is statutorily inadmissible to the United States for five years due to his failure to attend removal proceedings on May 15, 2006. The Field Office Director also denied the applicant's *Application for Permission to Reapply for Admission into the United States after Deportation or Removal* (Form I-212) as a matter of discretion stating that it would serve no purpose because he is not eligible for a waiver.

On appeal, counsel asserts that the applicant has demonstrated reasonable cause for his failure to attend removal proceedings. Counsel contends that the director's determination of inadmissibility under section 212(a)(6)(B) of the Act "utilized decisions that were made under a more stringent standard than the 'reasonable cause' standard in that section." *Form I-290B (Notice of Appeal),* dated October 19, 2010, and *Counsel's Appeal Brief*, dated November 19, 2010.

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.

The record reflects that the applicant entered the United States using a fraudulent visa and passport on January 17, 2000. On May 15, 2006, the applicant was ordered removed *in absentia* after he failed to appear at a removal hearing. The applicant was removed from the United States on March 25, 2008. The applicant does not contest these facts on appeal. The applicant is, therefore, inadmissible to the United States under section 212(a)(6)(B) of the Act for seeking admission to the United States within five years of his departure.

There is no statutory waiver of available for the ground of inadmissibility arising under section 212(a)(6)(B) of the Act. However, an alien is not inadmissible under section 212(a)(6)(B) of the Act if the alien can establish that there was a "reasonable cause" for failure to attend his removal proceeding. *See* Memo. from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators* 13 (March 3, 2009).

Counsel asserts that the applicant has demonstrated reasonable cause for his failure to attend removal proceedings. However, the instant appeal relates to a Form I-601 application for a waiver of inadmissibility arising under sections 212(g), (h), (i) and (a)(9)(B)(v) of the Act. Inadmissibility under section 212(a)(6)(B) of the Act and the "reasonable cause" exception thereto, is not 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)(6)(B) 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 because of a separate non-waivable ground of inadmissibility. The Field Office Director found that the applicant failed to present a "reasonable cause" for his failure to appear in removal proceedings. Since the applicant did not satisfy the requirements of this exception, he remains inadmissible under section 212(a)(6)(B) of the Act until March 25, 2013. Because no purpose would be served at this time in adjudicating a waiver of the applicant's inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the applicant's Form I-601 was properly denied.

The AAO notes that the Field Office Director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(6)(B) of the Act no purpose would be served in granting the applicant's Form I-212.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to overcome the basis of denial of his Form I-601 waiver application. The appeal will therefore be dismissed and the Form I-601 will be denied.

ORDER: The appeal is dismissed.