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



U.S. Citizenship
and Immigration
Services



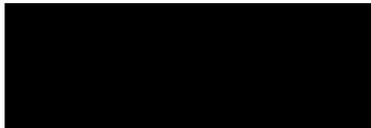
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DATE: Office: ATHENS, GREECE FILE: 
JUN 28 2011

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:

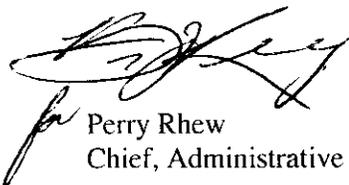


INSTRUCTIONS:

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.

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, Athens, Greece. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 34-year-old native and citizen of Turkey who was found to be inadmissible to the United States pursuant to section 212(a)(6)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(B), for failing to attend a removal proceeding; and 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 a period of more than one year and is seeking admission into the country within ten years of his last departure from the United States. The record reflects that the applicant is married to a United States citizen (USC) and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, in order to reside in the United States with his USC spouse and step-children.

The Field Office Director found that the applicant failed to attend his immigration hearing and is inadmissible to the United States under section 212(a)(6)(B) of the Act, for which there is no waiver. The Field Office Director stated that because this inadmissibility cannot be waived, the application for a waiver of inadmissibility under section 212(a)(9)(B)(ii) for unlawful presence will not be considered because the applicant is seeking admission within less than five years of his removal from the United States. The Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 9, 2009.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(B) of the Act because his failure to appear for the removal proceedings was due to the fault of the immigration court. Counsel asserts that the applicant did not receive the Notice to Appear (NTA) because the court erroneously mailed the NTA to an address in Canada, while the applicant was residing in the United States. See *Form I-290B* dated February 4, 2009, and counsel's brief in support of the appeal.

The record of proceedings reflects that on April 1, 2001, the applicant was admitted into the United States as a non-immigrant B-2 visitor with authorization to remain in the country until September 30, 2001. On October 27, 2001, the applicant attempted to enter Canada, he was refused entry into Canada and he returned to the United States. On the same date, the applicant was encountered by the U.S. Border Patrol, he was issued an NTA and was placed in Removal Proceedings under section 237(a)(1)(B) of the Act. He was scheduled to appear before an immigration judge in Buffalo, New York, for a removal hearing. The applicant failed to appear for his removal hearing and on February 7, 2003, an immigration judge ordered the applicant removed *in absentia* from the United States to Turkey. On March 11, 2003, a Warrant of Removal/Deportation (Form I-205) was issued. On September 6, 2005, the applicant's United States citizen spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on December 21, 2005. On January 8, 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On June 8, 2006, the Form I-485 was denied for lack of jurisdiction because of the

outstanding order of removal and the applicant was taken into custody. The applicant filed a motion to reopen and a motion for stay of removal before the immigration court, stating that he was not properly notified and did not receive notice of his hearing date. On July 19, 2006, an immigration judge denied the two motions. The applicant appealed the decision to the Board of Immigration Appeals (BIA). He also petitioned the court for a stay of removal pending consideration by the BIA of the immigration judge's denial of his motion to reopen. On August 9, 2006, the BIA denied the request for a stay of removal. The applicant was removed from the United States on October 6, 2006. On July 3, 2008, the applicant filed a Form I-601 waiver application and a Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal. On January 9, 2009, the Field Office Director denied the Form I-601 and Form I-212 applications, finding that the applicant is statutorily inadmissible to the United States under section 212(a)(6)(B) of the Act for which no waiver is available.

Section 212(a)(6)(B) of the Act states, 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 of deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

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

(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.
.

(v) Waiver.-The [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.

On appeal, counsel asserts that the applicant had a reasonable cause for not appearing for his removal proceedings. Counsel claims that the applicant did not receive the notice of hearing and did not appear for the hearing because the court incorrectly mailed the notice to a Canadian address. Counsel further asserts that the applicant is not inadmissible under section 212(a)(6)(B) of the Act and that he deserves a favorable exercise of discretion. *Appeal Brief*, pages 2 and 4. The record reflects that the issue of improper notice of hearing has been fully adjudicated by the immigration court and the BIA and they found that the applicant did not establish a reasonable cause as to why he failed to appear at his removal hearing.

Counsel has presented no new evidence of a reasonable cause why the applicant failed to appear for his removal hearing. Contrary to counsel's assertions the record clearly shows that on October 27, 2001, the applicant was personally served with an NTA, which charged him as removable from the United States under section 237(a)(1)(B) of the Act, and indicated that he would be scheduled to appear before an immigration judge in Buffalo, New York, at a future date and time. The applicant was also notified that a hearing date will be sent to his last known address of record, that he is required to immediately notify the court of any change of address and that failure to attend the hearing may result in an *in absentia* order against him. On December 10, 2001, a hearing date was set for February 20, 2002. The notice was sent to the applicant via regular mail to his last known address, in care of [REDACTED], an organization for world refugees. On January 25, 2002, the Court received a letter from a legal assistant at [REDACTED], explaining that the applicant left the United States and entered Canada on November 8, 2001, as a refugee claimant. [REDACTED] also informed the Court of the applicant's new address in [REDACTED], Ontario, Canada. Notice was sent to the applicant's address in Canada, and was returned as undeliverable. On January 15, 2003, the Court rescheduled the applicant's hearing date for February 7, 2003. Notice was sent to the applicant's address in Canada, and was not returned. On February 7, 2003, the applicant failed to appear for the scheduled hearing and was ordered removed from the United States *in absentia*. The order of removal was sent to the applicant's last known address in Canada on February 11, 2003, and was not returned.

As clearly shown above, the applicant received proper notice of his removal hearing and failed to attend. As the applicant has failed to provide reasonable cause why he failed to attend his removal hearing, the AAO agrees with the Field Office Director that the applicant is inadmissible under section 212(a)(6)(B) of the Act, for which there is no waiver.

The AAO finds that because the applicant is statutorily ineligible for relief, no purpose would be served in adjudicating his Form I-601 and examining whether the applicant has established extreme hardship to his United States citizen spouse or whether he merits the waiver as a matter of discretion.

The AAO notes that the record does not contain information on when and/or how the applicant returned to the United States after his entry into Canada on November 8, 2001. The letter from [REDACTED] indicates that the applicant left the United States on November 8, 2001. This information is confirmed by the document from Canadian immigration and signed by the applicant on the same date. The record reflects that the applicant was back in the United States in April 2002, as evidenced by the letter from [REDACTED], stating that the applicant was employed since April 2002. The

information provided by the applicant on the Form G-325A he signed on August 31, 2005 and on the Form I-601 waiver application, indicate no break in his continuous presence in the United States. The information in the record shows that the applicant was in Canada on November 8, 2001 and most probably on January 24, 2002, when [REDACTED] sent the letter to the immigration court in Buffalo, New York. The applicant has provided no information regarding his manner of reentry into the United States from Canada. Therefore, his manner of reentry from Canada into the United States may render him inadmissible on other grounds. This issue should be addressed at any future immigration proceedings regarding the applicant.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* 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.