

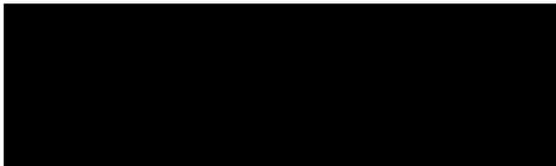
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U. S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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Date: **JAN 05 2012**

Office: LIMA

FILE:

IN RE:

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

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Lima, Peru. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the field office director for further action consistent with this decision.

The applicant is a native and citizen of Peru 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 more than one year and seeking admission within 10 years of her 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 attempted to procure immigration benefits by fraud or willful misrepresentation; 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 her departure. 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 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 her failure to attend removal proceedings in 1989. The field office director further noted that in 2014, when the applicant's inadmissibility under 212(a)(6)(B) of the Act is no longer applicable, she will be eligible to apply for a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act. *Decision of the Field Office Director*, dated August 19, 2009.

On appeal, counsel asserts that the applicant has demonstrated reasonable cause for her failure to attend removal proceedings. *See Form I-290B, Notice of Appeal*, dated September 17, 2009.

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 AAO finds that the field office director erred in finding the applicant statutorily inadmissible to the United States pursuant to section 212(a)(6)(B) of the Act. In the instant case, an Order to Show Case was issued in August 1988 and the applicant was ordered deported in March 1989. Section 212(a)(6)(B) of the Act does not apply to an alien placed in deportation or exclusion proceedings before April 1, 1997. *See 22 C.F.R. § 40.62*, which states:

An alien who without reasonable cause failed to attend, or to remain in attendance at, a hearing initiated on or after April 1, 1997, under INA 240 to determine inadmissibility or deportability shall be ineligible for a visa under INA 212(a)(6)(B) for five years following the alien's subsequent departure or removal from the United States. [62 FR 67567, Dec. 29, 1997].

Because the field office director determined that the applicant was inadmissible under section 212(a)(6)(B) of the Act, for which no waiver is available, the decision of the field office director did not address the merits of the applicant's Form I-601 application. The AAO will therefore remand the present matter to the field office director for a new decision outlining the merits of the applicant's waiver application under sections 212(a)(9)(B)(v) and 212(i) of the Act, including whether she has established extreme hardship to a qualifying relative and whether she merits a waiver as an exercise of discretion. If the new decision is adverse to the applicant, the decision shall be certified to the AAO for review.

**ORDER:** The matter is remanded to the field office director to issue a decision addressing the merits of the applicant's Form I-601. If that decision is adverse to the applicant, the district director shall certify the decision to the AAO for review.