

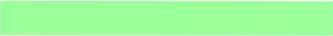


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 18 2013** OFFICE: NEW DELHI, INDIA

FILE: 


IN RE: 

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Field Office Director.

The applicant is a native and a citizen of India who was found to be inadmissible to the United States under 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; section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having made material misrepresentations to obtain immigration benefits; and section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), as an alien previously removed. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and section 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to reside in the United States with his U.S. citizen spouse and children.

When considering the applicant's request for a waiver of his inadmissibilities, the director determined that the applicant was also inadmissible to the United States pursuant to section 212(a)(6)(B) of the Act for failing to attend removal proceedings and seeking admission to the United States within five years of his subsequent removal. *See Decision of Field Office Director*, dated April 20, 2012. The application was accordingly denied.

On appeal, counsel does not contest the applicant's inadmissibility; however, counsel states that had the applicant been told about his inadmissibility under section 212(a)(6)(B) of the Act, he could have provided evidence to show reasonable cause for his failure to attend his removal proceeding. Counsel further states that the applicant would have waited before filing his waiver application had he been told that he was not eligible to file until January 25, 2013, five years after his departure from the United States. Counsel also states that filing a new waiver application will be financially burdensome for the applicant. *See Form I-290B, Notice of Appeal or Motion*, dated May 16, 2012.

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 indicates that on November 8, 2006, an immigration judge ordered the applicant deported *in absentia*. On January 25, 2008, the applicant departed the United States. As of January 25, 2013, the applicant is no longer inadmissible pursuant to section 212(a)(6)(B) of the Act.

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The director denied the applicant's waiver application solely based on a lack of a waiver for his inadmissibility under section 212(a)(6)(B), and she has not evaluated the applicant's hardship evidence. Therefore, the AAO remands the case to the director to adjudicate the applicant's waiver application on its merits and to issue a new decision. In the event that the new decision is adverse to the applicant, the director shall certify the decision to the AAO for review.

ORDER: The case is remanded to the Field Office Director for further action consistent with this decision and for issuance of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.