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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services



H6



Office: TEGUCIGALPA

Date:

NOV 16 2010

IN RE: Applicant: [Redacted]

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:

SELF-REPRESENTED

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras 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 a period of one year or more and under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for having failed to attend a removal proceeding without reasonable cause. The applicant is married to a U.S. Citizen and is the beneficiary of an approved petition for alien relative. She 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), in order to return to the United States and reside with her husband.

The field office director concluded that the applicant was statutorily ineligible for the relief requested because she is inadmissible under section 212(a)(6)(B) of the Act, for which no waiver is available, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 29, 2008.

On appeal, the applicant's husband asserts that he is experiencing extreme hardship because he is a single parent and is having difficulty working and taking care of his two children on his own. See *Letter from* [REDACTED] dated June 21, 2009. He further states that he has lived in Reno for 22 years and cannot leave his employment and relocate to Nicaragua. *Notice of Appeal to the AAO*, Form I-290B. In support of this assertion the applicant submitted letters from friends and employers and a copy of a bill. The entire record was reviewed and considered in arriving at 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 Secretary, 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)(B) provides:

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 the applicant was ordered removed in absentia by an immigration judge on October 12, 2005 because she was not present and no reasonable cause was provided for her failure to appear. The applicant is therefore inadmissible for a period of five years after September 9, 2006, the date she departed the United States. There is no waiver available for inadmissibility under section 212(a)(6)(B) of the Act. Since five years have not yet passed since the applicant's September 2006 departure from the United States, she is statutorily ineligible for the relief requested. As such, no purpose would be served in adjudicating her waiver under section 212(a)(9)(B)(v) of the Act or discussing whether the applicant has established extreme hardship to her husband or whether she merits the waiver as a matter of discretion.

In proceedings for application for a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden because she has not established that she is otherwise admissible to the United States even if a waiver under section 212(a)(9)(B)(v) were granted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.