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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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: GUATEMALA CITY, GUATEMALA

Date:

JAN 05 2011

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, 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, Guatemala City, Guatemala. 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 native and citizen of Guatemala who was found to be inadmissible to the United States pursuant to 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 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 United States citizen spouse and children.

The Field Office Director found that on May 26, 1999, the applicant was placed in removal proceedings and that he failed to appear for the removal proceedings. The applicant was then ordered removed *in absentia* by the immigration judge. Based on the applicant's failure to appear for the removal proceedings, the Field Office Director found him inadmissible pursuant to section 212(a)(6)(B) of the Act, for which no waiver is available. The Field Office Director did not make any determination whether the applicant had established extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 29, 2008.

On appeal, the applicant's spouse asserts that the applicant did not appear for the removal proceedings because the applicant did not receive the notice to appear and did not know that he was placed in a removal proceeding. See *Form I-290B* dated August 21, 2008.

The record includes, but is not limited to, a statement of hardship from the applicant's spouse, copies of medical records and psychological evaluation of the applicant's children, a verification of employment letter from the applicant's spouse's employer, and copies of various bills. The entire record was reviewed and considered in rendering this decision on the appeal.

In the present case, the applicant stated that he first entered the United States in December 1996 without being inspected and admitted or paroled. On September 6, 1997, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589). On December 3, 1998, the Acting Director, San Francisco Asylum Office, denied the Form I-589 application. The Acting Director issued a Notice to Appear (NTA) for the applicant to appear before an Immigration Judge in Reno, Nevada, on May 26, 1999. The record reflects that on December 3, 1998, and on December 9, 1998, the Acting Director mailed the NTA via certified mail, return receipt requested, to the applicant at [REDACTED], which was the applicant's address of record. The second notice mailed to the applicant on December 9, 1998, was returned unclaimed. The record does not reflect that the applicant filed a change of address notice (Form AR11) until February 18, 1999, two months after the NTA was mailed to the applicant. Therefore, the applicant's spouse's assertion that the applicant did not receive an NTA is without merit.

The record reflects that on May 26, 1999, the applicant was ordered removed from the United States to Guatemala *in absentia*. It appears that the applicant remained in the United States until sometime in October 2007 when he departed the United States to Guatemala. The applicant is married to a United States citizen, and on October 16, 2007, the applicant applied for an immigrant visa at the United States Embassy in Guatemala City, Guatemala, based on the approved Form I-130. The consular officer found the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(II) for unlawfully remaining in the United States for a period of more than one year and seeking readmission within ten years of his last departure from the United States. On October 17, 2007, the applicant filed a Form I-601. On July 29, 2008, the Field Office Director denied the Form I-601, finding that the applicant is inadmissible pursuant to section 212(a)(6)(B) of the Act because he was ordered removed from the United States *in absentia* on May 26, 1999, by an immigration judge after he failed to appear at a removal hearing.

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.

An alien who is inadmissible under section 212(a)(6)(B) of the Act is inadmissible for 5 years from the date of departure or removal from the United States and there is no waiver available for that 5 year inadmissibility period. In this case, the applicant has not established reasonable cause for his failure to attend the removal proceedings. Additionally, since the applicant left the United States while under a final order of removal, he may be required to submit a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, after he has been outside the United States for five years since the date of his last departure from the United States. The record does not reflect that the applicant in the present matter has resided outside of the United States for the required five years. Accordingly, the AAO agrees with the Field Office Director's decision that the applicant is currently statutorily ineligible to apply for permission to reapply for admission. As such no purpose would be served in adjudicating his Form I-601 waiver application under section 212(a)(9)(B)(v) of the Act. The appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, 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.