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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**

**PUBLIC COPY**



tlc

Date: NOV 09 2011 Office: TEGUCIGALPA , HONDURAS FILE:

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, 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)(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 more than one year and seeking readmission within ten years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen, the father of two United States citizen children, and the son of a United States citizen. He 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, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse and children.

The Field Office Director found that no waiver was available for the applicant's inadmissibility under section 212(a)(6)(B) of the Act, the applicant had failed to establish that extreme hardship would be imposed on his qualifying relative, and he denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 6, 2009.

On appeal, the applicant, through counsel, claims that the decision by United States Citizenship and Immigration Services (USCIS) "fail[ed] to state that the applicant ever received notice of" of his removal hearing "in English or his native Spanish [l]anguage." *Attachment to Form I-290B*, filed June 8, 2009.

Section 212(a)(6)(B) of the Act provides, in pertinent part:

- (B) Failure to attend removal proceedings.—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 reflects that on March 8, 1999, the applicant entered the United States without inspection. On March 9, 1999, a Notice to Appear (NTA) was issued against the applicant. On June 25, 1999, an immigration judge ordered the applicant removed *in absentia* from the United States. On March 12, 2007, the applicant was removed from the United States. The applicant does not contest these facts. The applicant is, therefore, inadmissible to the United States under section 212(a)(6)(B) of the Act for seeking admission to the United States within five (5) years of his departure.

There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(6)(B) of the Act. However, an alien is not inadmissible under section 212(a)(6)(B) of the Act if the alien can establish that there was a "reasonable cause" for failure to attend his removal proceeding. *See Memo from [REDACTED] and [REDACTED], to Field*

Leadership, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators 13* (March 3, 2009).

As noted above, counsel claims that the decision by USCIS “fail[ed] to state that the applicant ever received notice of” of his removal hearing “in English or his native Spanish [I]language.” *Attachment to Form I-290B, supra*. The AAO notes that in April 1999, the applicant supplied a [REDACTED] address, to the immigration court. In 1999, the immigration court sent notices and orders to the [REDACTED] address, and there is no evidence in the record that the notices and orders were not received at the applicant’s last known address. The burden of proof in this proceeding is on the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Therefore, counsel has not established that the applicant had “reasonable cause” for failing to attend his removal proceeding.

The AAO finds that the applicant’s inadmissibility under section 212(a)(6)(B) of the Act can properly be used by the Field Office Director as a basis for denying the applicant’s Form I-601, as no purpose is served in adjudicating a waiver application where the visa application cannot be approved because of a separate non-waivable ground of inadmissibility. The Field Office Director found that the applicant “failed to attend [his] immigration hearing on June 25, 1999, without good cause.” Since the applicant did not satisfy the requirements of this exception, he remains inadmissible under section 212(a)(6)(B) of the Act until March 12, 2012. Because no purpose would be served at this time in adjudicating a waiver of the applicant’s inadmissibility under section 212(a)(9)(B)(v) of the Act, the applicant’s Form I-601 was properly denied.

In proceedings for application for 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. See section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to overcome the basis of denial of his Form I-601 waiver application. The appeal will therefore be dismissed and the Form I-601 will be denied.

**ORDER:** The appeal is dismissed.