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



H6

DATE: NOV 10 2011 OFFICE: GUATEMALA CITY FILE: [REDACTED]  
IN RE: APPLICANT: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:  
[REDACTED]

**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 Rhev, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application and permission to reapply for admission were denied by the Field Office Director, Guatemala City, Guatemala, and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 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 readmission within 10 years of her last departure from the United States. The applicant was also found to be inadmissible pursuant to section 212(a)(9)(A) of the Act and section 212(a)(6)(B) of the Act because she was ordered removed *in absentia* by an immigration judge on December 20, 2000, later leaving the United States on May 29, 2008. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with her U.S. Citizen spouse and child.

The Field Office Director concluded that the applicant did not establish extreme hardship to a qualifying relative and also did not show reasonable cause for failure to attend her removal hearing and denied the application accordingly. *See Decision of Field Office Director* dated July 17, 2009.

On appeal, counsel for the applicant submits a brief in support of appeal. Therein, counsel contends the applicant was not informed by her immigration representative that she needed to be present at her immigration hearing on December 20, 2000 while an interlocutory appeal to the Board of Immigration Appeals (BIA) was pending. *Brief in support of appeal*, August 7, 2009. Counsel asserts that the applicant has therefore demonstrated reasonable cause for her failure to attend removal proceedings. Counsel explains the Deportation and Removal Office declined to execute the warrant of removal at an interview to adjudicate an I-130 Petition in 2006. *Id.* Counsel then indicates the applicant has made a sufficient showing of extreme hardship to her spouse, as he suffers from financial, economic, and psychological hardship due to her absence. *Id.* The applicant submits her declaration and statement, psychological evaluations, the previously submitted I-601 and I-212 packages, a letter from United States representative Harry Reid, and email correspondence on appeal.

The record includes, but is not limited to, the documents listed above, records of removal proceedings and consular interviews, birth and marriage certificates, copies of photographs and paintings, affidavits and statements from the applicant's spouse, and articles and reports on country conditions in Guatemala. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(B) Failure to attend removal proceeding.

- (1) In general.-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 the applicant entered the United States without inspection on March 22, 2000. The applicant was apprehended by immigration officials in Texas the next day, presenting herself as [REDACTED]. She was detained until March 31, 2000 when she was released on a \$2,500.00 bond. The applicant was placed in removal proceedings, which were continued until December 20, 2000. The applicant does not dispute that she received notice of her December 20, 2000 hearing. The record further reflects that the applicant filed a motion to change venue from Harlingen, Texas to Los Angeles, California, on or about August 26, 2000. The immigration judge denied the motion, finding that the applicant had not pled to the allegations in the Notice to Appear, and "if Respondent denies removability, the Immigration Service may well need to present witnesses in South Texas, where Respondent was arrested by the Service." *Order of Immigration Judge*, October 11, 2000. The applicant does not contest that she received this Order; however, the applicant asserts she and her notary, [REDACTED] filed an interlocutory appeal of this decision with the Board of Immigration Appeals (BIA) on October 20, 2000. *Declaration of applicant*, August 2009. The applicant failed to attend her December 20, 2000 hearing. During her *in absentia* hearing on December 20, 2000, the immigration judge found there was sufficient evidence to find removability as charged, and ordered the applicant removed to Guatemala. *Order of Immigration Judge*, December 20, 2000. The applicant claims: "I was not aware of the removal order of the Immigration Judge nor did [REDACTED] inform me that I needed to be present at the Immigration Court in Texas at the December 20, 2000 Master hearing while the appeal was being reviewed. If [REDACTED] had instructed me to go to the scheduled court hearing while the appeal was being considered I would have made sure to be in court as required." *Declaration of applicant*, August 2009. The applicant states at the time she did "not read, write, or speak English" and she became the "victim of someone who was not an attorney but who was practicing law." *Id.* The applicant appealed the December 20, 2000 decision to the BIA. The BIA denied this appeal on February 27, 2001, finding the proper procedure to challenge the December 20, 2000 order was to file a motion to reopen with the Immigration Judge, not an appeal with the BIA. *BIA Order*, February 27, 2001. On March 5, 2001, the BIA denied the applicant's interlocutory appeal of the immigration judge's order denying the motion to change venue, because the "Immigration Judge subsequently entered a dispositive removal order in this case on December 20, 2000, the interlocutory appeal is now moot." *BIA Order*, March 5, 2001.

There is no statutory waiver of 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 Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators* 13 (March 3, 2009).

Counsel asserts that the applicant has demonstrated reasonable cause for her failure to attend removal proceedings. However, the instant appeal relates to a Form I-601 application for a waiver of inadmissibility arising under section 212 (a)(9)(B)(v) of the Act. Inadmissibility under section 212(a)(6)(B) of the Act and the “reasonable cause” exception thereto, is not the subject of the Form I-601, and is not within the subject matter jurisdiction of the AAO to adjudicate with this appeal.

In the present matter, the applicant’s last departure from the United States occurred on May 29, 2008, less than five years ago. The applicant is, therefore, inadmissible to the United States under section 212(a)(6)(B) of the Act for having failed to appear at her removal hearing and seeking admission to the United States within five years of her subsequent departure. There is no waiver available for this ground of inadmissibility.

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 a visa application cannot be approved because of a separate non-waivable ground of inadmissibility. The Field Office Director found that the applicant failed to present a “reasonable cause” for her failure to appear in removal proceedings. Since the applicant did not satisfy the requirements of this exception, she remains inadmissible under section 212(a)(6)(B) of the Act until May 29, 2013. Because no purpose would be served at this time in adjudicating a waiver of the applicant’s inadmissibility under sections 212(a)(9)(B)(v) of the Act, the applicant’s Form I-601 was properly denied.

The AAO notes that the Field Office Director denied the applicant’s Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(6)(B) of the Act no purpose would be served in granting the applicant’s Form I-212.

In proceedings for a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, or permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) 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.