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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**

[REDACTED]

*tlc*

Date: NOV 17 2011 Office: MEXICO CITY (CIUDAD JUAREZ) FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

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 Rhew*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Mexico City. The matter 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 Mexico 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 more than one year; section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien who was ordered deported and who departed the United States while a deportation order was outstanding; and section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend his deportation proceeding. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.

The field office director found that there is no waiver available for a finding of inadmissibility under section 212(a)(6)(B) of the Act, that the applicant's application should be denied as a matter of discretion given the applicant's disregard and disobedience to the laws of the United States, and that the applicant failed to establish extreme hardship to a qualifying relative. The acting district director denied the application accordingly. *Decision of the Acting District Director*, dated September 23, 2008.

On appeal, counsel contends, *inter alia*, that the applicant established extreme hardship to his wife and children.

The record contains, *inter alia*: a marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on June 12, 1999; a copy of the birth certificates of the couple's three U.S. citizen children; declarations from the applicant; letters and a declaration from [REDACTED]; letters from [REDACTED] physicians and copies of her medical records and prescription medications; a psychoemotional evaluation of [REDACTED]; an Individualized Education Plan ("IEP"), a psychosocial evaluation, and a letter from the special education department chair addressing the couple's daughter's auditory processing deficit; copies of tax returns, bills, and other financial documents; copies of photographs; a letter from the applicant's employer; letters of support; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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 the Secretary of 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)(9)(A)(ii) of the Act provides, in pertinent part:

Any alien not described in clause (i) who--

(I) has been ordered removed under section 1229a of this title or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception

Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

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 of deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

There is no waiver available for a finding of inadmissibility under section 212(a)(6)(B) of the Act.

In this case, the record shows, and counsel does not contest, that the applicant entered the United States without inspection in 1990. An Order to Show Cause was issued on December 9, 1996, placing the applicant in deportation proceedings. *Order to Show Cause and Notice of Hearing (Form I-221)*, dated December 9, 1996. The record further shows, and the applicant concedes, that he failed to attend his deportation hearing on June 4, 1997. *Declaration of [REDACTED]*, dated September 27, 2007 (stating that he was not present for his hearing because he never received notice of it); *Order of the Immigration Judge*, dated June 4, 1997 (stating the applicant was not present for the hearing and ordering him deported). The applicant remained in the United States until his departure in September 2007, accruing unlawful presence beginning on April 1, 1997, the date of enactment of unlawful presence provisions under the Act. Therefore, the record shows that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, section 212(a)(9)(A)(ii) of the Act, and section 212(a)(6)(B) of the Act. Although the applicant is eligible to apply for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act and an exception under 212(a)(9)(A)(iii) of the Act, section 212(a)(6)(B) of the Act clearly states that the applicant remains inadmissible to the United States for five years after the alien's departure or removal. In this case, the applicant departed the United States in September 2007. He is ineligible to apply for admission to the United States until September 2012.

Having found the applicant statutorily ineligible for relief at this time, no purpose would be served in discussing whether he has established the existence of extreme hardship to a qualifying relative or whether he merits an exception as a matter of discretion. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.