

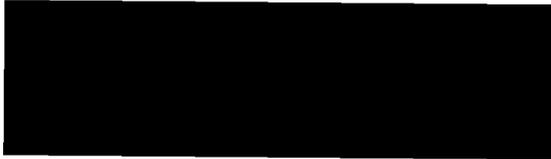
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



H.G.

DATE: **SEP 19 2011** Office: GUATEMALA CITY, GUATEMALA

FILE: 

IN RE: 

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 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 admission within ten years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and is the father of two United States citizens. 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.

The Field Office Director found the applicant to be subject to section 212(a)(6)(B) of the Act for his failure to attend his removal proceedings and to section 212(a)(9)(C)(i)(1) of the Act for reentering the United States without inspection after having accrued more than one year of unlawful presence. Accordingly, the Field Office Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, even though he found the applicant statutorily eligible for a waiver under section 212(a)(9)(B)(v) of the Act. *Decision of the Field Office Director*, dated May 29, 2009.

On appeal, the applicant's spouse asserts that there is no evidence to establish that the applicant illegally reentered the United States after having accrued unlawful presence of more than one year. *Statement from the applicant's spouse*, dated April 29, 2011.

The record includes, but is not limited to, statements from the applicant and his spouse; statements from family and friends, including the applicant's pastors; copies of money transfer receipts; a letter from the applicant's former employer; a letter from the applicant's spouse's employer; medical records relating to the applicant's spouse and one of his sons; a copy of Application for Cash and Food Stamps, and/or Medicaid; and documents relating to the applicant's removal proceedings. The entire record was reviewed and all relevant evidence considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) states in pertinent part:

(B) Aliens Unlawfully Present.-

(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.

The record reflects that the applicant entered the United States on September 2, 1999, without inspection. On October 26, 1999, an Immigration Judge ordered the applicant removed *in absentia*.

On March 4, 2006, the applicant was detained and, on March 6, 2006, he was interviewed by an immigration agent.

The Form I-213, Record of Deportable/Inadmissible Alien, prepared on March 6, 2006, indicates that the applicant informed the agent that he had last entered the United States in February 2002, without inspection. The applicant was subsequently removed from the United States on April 5, 2006. At his consular interview in Guatemala City the applicant testified that he had resided unlawfully in the United States from 1999 until he was removed in April 2006. Based on this history, the AAO finds the applicant to have accrued unlawful presence in the United States of more than one year. His removal from the United States in April 2006, triggered the bar to inadmissibility under section 212(a)(9)(B)(i) of the Act. As the applicant is seeking admission within ten years of his 2006 departure, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The Field Office Director found the applicant to have established that his spouse would suffer extreme hardship and, therefore, statutorily eligible for a waiver of his inadmissibility under section 212(a)(9)(B)(v) of the Act. However, the Field Office Director found that no purpose would be served by favorably exercising the Attorney General's (now Secretary's) discretion as the applicant was also inadmissible under sections 212(a)(6)(B) and 212(a)(9)(C) of the Act.

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 subject to section 212(a)(6)(B) of the Act is inadmissible for five years from the date of departure or removal from the United States and no waiver is available for that five-year inadmissibility period. In this case, we do not find it necessary to consider this ground as the applicant departed the United States more than five years ago and is therefore, no longer inadmissible to the United States.

The Field Office Director also found the applicant inadmissible pursuant to section 212(a)(9)(C)(i) of the Act.

Section 212(a)(9)(C) of the Act, provides:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general. -Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

.....

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

On appeal, the applicant's spouse asserts that the applicant continuously resided in the United States from 1999 until he was removed in April 2006, and that he has remained outside the United States since then. In support of these assertions, the record contains three copies of money transfer receipts dated January 2, February 7, and April 11, 2011; an undated statement from [REDACTED] a [REDACTED], stating that the applicant was an active member and part of the leadership in their ministry for a period of three years, from September 2001 to July 2004; and a statement from the applicant's former employer, [REDACTED], dated July 17, 2009, stating that the applicant was employed for approximately two years between December 1999 through January 2003 and never requested vacation or was absent for a long period of time.

While the AAO notes these documents, we do not find them sufficient to establish that the applicant did not depart the United States to visit his family in Guatemala and reenter in February 2002, as he told the immigration officer who interviewed him on March 6, 2006. The record contains no evidence that would establish that the applicant's prior statement was inaccurate or untrue. Accordingly, the AAO finds the record to demonstrate that the applicant reentered the United States without inspection after accruing more than one year of unlawful presence and after being ordered removed by an immigration judge, and is therefore barred from admission under section 212(a)(9)(C)(i)(I) and (II) of the Act.

To seek an exception from a finding of inadmissibility under section 212(a)(9)(C)(i)(I) and (II) of the Act, an applicant must remain outside the United States for at least ten years following his or her last departure. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). The record in the present matter does not establish that the applicant has resided outside the United States for the required ten years. Accordingly, the applicant is statutorily ineligible to seek an exception from his inadmissibility under section 212(a)(9)(C)(i) of the Act.

As the applicant is not eligible to receive an exception from his section 212(a)(9)(C)(i) inadmissibility, the AAO concurs with the Field Office Director's finding that no purpose would be served by a favorable exercise of discretion in this matter. The appeal will therefore be dismissed.

The record also indicates that the Field Office Director has denied the applicant's Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal based on his determination that the applicant was inadmissible under sections 212(a)(6)(B) and 212(a)(9)(C)(i)(I) of the Act. The AAO notes that in *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964), the Board of Immigration Appeals 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 statutorily inadmissible under section 212(a)(9)(C)(i) of the Act and based on the reasoning in *Martinez-Torres*, we will not further consider the Form I-212 application.

In proceedings for application for waiver of grounds of inadmissibility, 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.

ORDER: The appeal is dismissed.