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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**



Ht6

[Redacted]

DATE: **AUG 06 2012** OFFICE: **GUATEMALA** FILE: [Redacted]

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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:  
[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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Guatemala City, Guatemala, and 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 one year or more and seeking readmission within 10 years of departure from the United States. The applicant was also found to be inadmissible under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B) and 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) due to the *in absentia* removal order entered in his case on December 9, 1998 by the Immigration Court in Miami, Florida. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. 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), in order to reside in the United States with his spouse.

In a decision dated August 12, 2010, the Field Office Director found that the applicant did not establish extreme hardship to his qualifying relative. Additionally, the Field Office Director found that the applicant was also inadmissible under sections 212(a)(6)(B) and 212(a)(9)(A) of the Act.

On appeal, counsel for the applicant states that the applicant's failure to attend removal proceedings was reasonable, and that the applicant has established that his U.S. citizen spouse will suffer extreme hardship as a result of his inadmissibility.

In support of the waiver application, the record includes, but is not limited to, legal arguments by counsel for the applicant, biographical information for the applicant's spouse and child, a psychological report regarding the applicant's spouse, a statement from the applicant, a statement from the applicant's spouse, medical records for the applicant's spouse and child, a letter from the applicant's spouse's brother, letters from the applicant's spouse's employer, a statement from the applicant, a statement from the applicant's spouse, documentation of the applicant's departure from the United States, and documentation concerning the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was found inadmissible under Section 212(a)(9) of the Act, which provides, in pertinent part, that:

**(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.

...

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record establishes that the applicant entered the United States on or around October 25, 1991 at age 12. The applicant was ordered removed *in absentia* by the Immigration Judge in Miami, Florida on December 9, 1998 at age 19, but remained in the United States until his departure at his own expense on April 22, 2009. The applicant was a dependent on his father's application for asylum until the entry of the removal order in his case. The applicant accrued one year or more of unlawful presence in the United States after the entry of his removal order on December 9, 1998 until March 13, 2008, the time of the applicant's filing an application for asylum. As a result, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of one year or more. The applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is in effect for 10 years after the date of his last departure from the United States. The applicant has not disputed this finding of inadmissibility.

As a result of his removal order, the applicant was also found to be inadmissible under section 212(a)(9)(A)(ii) of the Act. Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 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 Secretary has consented to the alien's reapplying for admission.

...

The record also reflects that the applicant failed to attend removal proceedings in his case on December 9, 1998. The Immigration Judge denied the applicant's untimely motion to reopen on this ground on July 15, 1999 and the Board of Immigration Appeals upheld that decision on May

15, 2002. The applicant has not sought Permission to Reapply for Admission into the United States after Deportation or Removal pursuant to Section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), and will not be eligible to do so until five years after his departure from the United States as result of his inadmissibility under section 212(a)(6)(B) of the Act as set forth below.

As a result of the applicant's failure to attend removal proceedings, he is inadmissible under section 212(a)(6)(B) of the Act, which provides, 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 or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

Based on the *in absentia* removal order, the applicant is inadmissible to the United States and not eligible to apply for admission for a period of five years from the date of his departure from the United States. There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(6)(B) of the Act.<sup>1</sup>

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 his 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.

Because the applicant is inadmissible under section 212(a)(6)(B) of the Act for five years, 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, and the applicant's Form I-601 was properly denied by

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<sup>1</sup> The AAO notes that the Field Office Director's decision states that there is no waiver of the "inadmissibility ground enumerated at section 212(a)(9)(C) of the Act," which appears to have been an error. There is no evidence in the record to indicate that the applicant is inadmissible under section 212(a)(9)(C) of the Act, and as a result, the Field Office Director's calculation that the applicant is not eligible to seek permission to reapply for admission to the United States after removal until April 2019 is incorrect.

the Field Office Director. The AAO notes that the Field Office Director further denied the application in this case based on the applicant's failure to establish extreme hardship to his U.S. citizen spouse, however we do not reach the merits of that decision as a result of the applicant's inadmissibility under section 212(a)(6)(B) of the Act.

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. 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.