

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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



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

[Redacted]

H6

Date: **AUG 13 2012**

Office: CLEVELAND

FILE: [Redacted]

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility (Form I-601)

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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Cleveland, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who last entered the United States on or about December 27, 1990 without inspection. The record reflects that the applicant submitted various applications for immigration benefits; however, was ultimately placed into removal proceedings and granted voluntary departure on January 7, 2000. The applicant failed to depart and the grant of voluntary departure converted into a removal order. *See* Section 240B(d) of the Act. The applicant subsequently filed for and was granted temporary protected status. The applicant also married a U.S. citizen on August 11, 2003. Her U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on November 18, 2003 naming the applicant as beneficiary. The applicant later filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

On June 9, 2010 the Field Office Director denied Application for Waiver of Grounds of Inadmissibility (Form I-601) citing the applicant's failure to identify a ground of inadmissibility to be waived and the absence of an underlying application for admission.

On appeal, counsel for the applicant states that the applicant is eligible to apply for a waiver of inadmissibility under section 212(a)(9)(A)(v) of the Act.

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's U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary on November 18, 2003, indicating on the petition that the applicant "would apply for a visa abroad at the American consular post in Cleveland, Ohio." Because that is not possible, it was assumed that the petitioner meant to indicate that the applicant would apply for adjustment of status at the USCIS office in Cleveland, Ohio. The AAO also notes that despite counsel's assertions on appeal, the I-130 was approved on October 28, 2005 and the approval notice was sent to the petitioner at 27087 Oakwood Circle #103, Olmsted Falls, Ohio 44138. The remarks section of the approval notice states that "Your petition will remain in your file at the Cleveland District Office. You must file Form I-485 to continue processing your application for permanent residence." The record does not reflect that the applicant has filed an application for adjustment of status in connection with her approved immigrant visa petition. As there is no underlying application for adjustment of status, no purpose would be served in adjudicating the Application for Waiver of Grounds of Inadmissibility (Form I-601). As such, the Form I-601 was properly denied by the Field Office Director.<sup>1</sup>

---

<sup>1</sup> On appeal, counsel for the applicant states that the applicant should be eligible to apply for a waiver of 212(a)(9)(A)(ii) of the Act pursuant to section 212(a)(9)(A)(v) of the Act. There is no such section of the

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish she is eligible for the benefit sought. After a careful review of the record, the AAO finds that the applicant has not met her burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

---

Act. If counsel for the applicant is referring to a waiver pursuant to section 212(a)(9)(B)(v) of the Act, for unlawful presence under section 212(a)(9)(B)(i) of the Act, there is no indication in the record that the applicant is presently inadmissible under that section of law. The unlawful presence provisions under the Act are triggered upon departure from the United States. Additionally, an individual who is inadmissible under 212(a)(9)(A)(ii) may seek permission to reapply for admission to the United States pursuant to section 212(a)(9)(A)(iii) of the Act by filing an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212), which the applicant has separately done in this case.