



U.S. Citizenship
and Immigration
Services



H6

Date: **DEC 08 2012**

Office: SAN SALVADOR

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 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 in accordance with the instructions on 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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Salvador, El Salvador. The matter 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 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 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) of the Act. The applicant was also found inadmissible under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend removal proceedings and seeking admission to the United States within 5 years of her departure.

The field office director denied the *Application for Waiver of Grounds of Inadmissibility* (Form I-601) based on a finding that under section 212(a)(6)(B) of the Act the applicant is statutorily inadmissible to the United States for five years due to her failure to attend removal proceedings in 2007. The field office director further noted that in March 2016, when the applicant's inadmissibility under 212(a)(6)(B) of the Act is no longer applicable, she will be eligible to apply for a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. *Decision of the Field Office Director*, dated September 12, 2011.

On appeal, the applicant asserts that she had reasonable cause for her failure to attend removal proceedings as she contends that she never got notice of her hearing. *See Form I-290B*, Notice of Appeal, dated October 7, 2011.

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 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 authorization.¹ In March 2007, the applicant was ordered removed *in absentia* after she failed to appear at a removal hearing. The applicant departed the United States on or around March 19, 2011. The applicant is, therefore, inadmissible to the United States under section 212(a)(6)(B) of the Act for seeking admission to the United States within five years of her departure.

¹ The record is unclear as to whether the applicant entered the United States without authorization in November 2000, as noted on the applicant's Form I-821, Application for Temporary Protected Status, or in April 2002, as noted on the applicant's Form G-325A, Biographic Information. Irrespective of whether the applicant entered the United States in 2000 or 2002, the applicant remains inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(B) of the Act.

There is no statutory waiver 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).

The applicant asserts that she 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.

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 March 2016. Because 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, the applicant’s Form I-601 was properly denied.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to overcome the basis of denial of her Form I-601 waiver application. The appeal will therefore be dismissed and the Form I-601 will be denied.

ORDER: The appeal is dismissed.