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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



H6

Date: **FEB 28 2012** Office: ATHENS, GREECE

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), and section 212(i) of the Act, 8 U.S.C. § 1182(i)

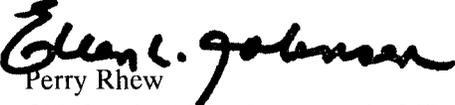
ON BEHALF OF APPLICANT:

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, Athens, Greece. 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 Palestinian born in Syria and a citizen of Jordan who was found to be inadmissible to the United States pursuant to: section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year; section 212(a)(9)(A)(ii) of the Act as an alien who was ordered removed; section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit; and section 212(a)(6)(B) of the Act for failing to attend his removal 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 and that, in any event, the applicant did not establish extreme hardship to a qualifying relative. The field office director denied the application accordingly. *Decision of the Field Office Director*, dated July 30, 2010.

On appeal, counsel contends that the applicant did not attend his removal proceeding because he never received notice of the hearing. Counsel also contends that the field office director failed to properly consider all of the evidence of hardship and improperly considered relocation to Kuwait and Egypt, where the applicant does not have residency rights.

The record contains, *inter alia*: a marriage certificate of the applicant and his wife, indicating they were married on May 5, 2004; copies of birth certificates of the couple's U.S. citizen children; an affidavit from a psycho-social evaluation; documentation from the children's school; copies of pay stubs, money transfer receipts, and other financial documents; 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)(C)(i) of the Act provides, in pertinent part:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

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 on November 16, 2001, the applicant failed to attend a scheduled immigration hearing and was ordered removed *in absentia* by an Immigration Judge the same day. The record further shows that the applicant was removed from the United States in June 2007. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(B) of the Act.

There is no statutory waiver of 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).

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 sections 212(i) and (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 his failure to appear in removal proceedings based on the Immigration Judge's denial of the applicant's motion to reopen. Since the applicant did not satisfy the requirements of this exception, he remains inadmissible under section 212(a)(6)(B) of the Act until June 2012. Because no purpose would be served at this time in

adjudicating a waiver of the applicant's inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the applicant's Form I-601 was properly denied.

The AAO notes that the Field Office Director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964), 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 inadmissible under section 212(a)(6)(B) of the Act no purpose would be served in adjudicating the applicant's Form I-212.

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 his Form I-601 waiver application. The appeal will therefore be dismissed and the Form I-601 will be denied.

ORDER: The appeal is dismissed.