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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

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DATE: JAN 09 2012 OFFICE: GUATEMALA CITY, GUATEMALA

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, 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 under 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; and 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 subsequent departure or removal. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and that the applicant is statutorily inadmissible to the United States for failing to attend her removal proceedings on August 5, 2003, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated July 28, 2009.

On appeal, the applicant asserts that the in absentia order of removal should be rescinded, and a waiver should be granted because she has subsequently married and had children and her qualifying relative spouse would suffer extreme hardship if a waiver is not granted. See *Appeal Brief*, dated September 22, 2009.

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 inspection, on or about April 19, 2003. On April 20, 2003, the applicant was apprehended by immigration officials and determined to be subject to removal pursuant to section 212(a)(6)(A)(i) of the Act. The applicant was released and ordered to appear before an Immigration Judge on August 5, 2003. The applicant did not attend her August 5, 2003 hearing, and failing to show good cause, was ordered removed in absentia the same date. The applicant remained unlawfully in the United States before voluntarily departing to Guatemala in December 2008. At no time from August 2003 to December 2008 did the applicant file a motion or otherwise seek to show good cause for her failure to attend her August 5, 2003 removal proceedings. 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.

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 her 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 burden of proof in this proceeding is on the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not established that she had “reasonable cause” for failing to attend her removal proceeding.

The applicant asserts that since the in absentia order of removal was issued, “significant new and material events have consequently affected Applicant’s life, as well as, other individuals who are wholly dependent on her presence.” *See Appeal Brief*, dated September 22, 2009. In support, the applicant states that she has a bonafide marriage to a U.S. citizen who is gainfully employed; two U.S. citizen minor children; and a lawful permanent resident brother who will suffer hardship in her absence. *Id.* The applicant asserts that “in light of the extreme hardship,” she “should be provided the due process opportunity to file for a Motion to Reopen for the In Absentia Order to be justly rescinded...” *Id.* The AAO notes that the instant appeal relates to a Form I-601 application for a waiver of inadmissibility arising under sections 212(g), (h), (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.

In the present matter, the applicant’s last departure from the United States occurred in December 2008, less than five years ago. The applicant is, therefore, inadmissible to the United States under section 212(a)(6)(B) of the Act for having failed to appear at her removal hearing and seeking admission to the United States within five years of her subsequent departure. There is no waiver available for this ground of inadmissibility.

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.

Although adjudicating the applicant’s waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act was unnecessary given her continued inadmissibility under section 212(a)(6)(B), the Field Office Director properly denied the applicant’s Form I-601. Because the applicant is statutorily ineligible for relief, however, no purpose would be served in discussing whether the

applicant has established extreme hardship to a qualifying relative or whether she merits the waiver as a matter of discretion.

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.