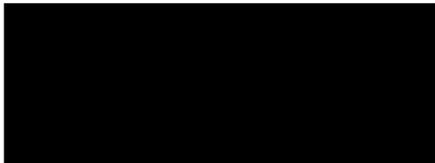


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship and Immigration Services



PUBLIC COPY



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Date: **JAN 23 2012** Office: CIUDAD JUAREZ, MEXICO FILE:

IN RE: Applicant:

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:

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, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(B), for failing to attend a removal proceeding; and section 212(a)(9)(B)(i)(II) of 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 readmission within ten years of her last departure from the United States. The record indicates that the applicant is married to a United States citizen and the mother of four United States citizen children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to 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 her spouse and children.

The Field Office Director found that no waiver was available for the applicant's inadmissibility under section 212(a)(6)(B) of the Act, the applicant had failed to establish that extreme hardship would be imposed on her qualifying relative, and he denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 11, 2009.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) "erred and abused their discretion in denying [the applicant's] Form I-601 waiver." *Form I-290B*, filed July 14, 2009. Counsel claims that the applicant's "failure to appear at her scheduled hearing was beyond her control. [The applicant] was defrauded by a non attorney, notario, who filed an asylum application on her behalf without her full and complete knowledge." *Id.* Counsel also claims that the applicant "did not receive notice of her scheduled hearing and never knew about the hearing. The certificate of service alleged to be present does not have her signature on it. The fraud comitted [sic] against [the applicant], and her failure to receive notice establishes 'reasonable cause' as to her failure to attend her deportation hearing." *Id.* Additionally, counsel claims that USCIS "erred and abused their discretion in finding she did not establish the required 'extreme hardship' for approval of the waiver." *Id.*

The AAO notes that on appeal, the applicant, through counsel, requested 30 days to submit a brief and/or evidence to the AAO. *Form I-290B, supra.* The record contains no evidence that a brief or additional evidence was filed within 30 days. On December 22, 2011, the AAO sent counsel a facsimile requesting evidence of the brief and/or additional evidence, or a statement by counsel that neither a brief nor evidence was filed; however, the AAO received no reply from counsel. Therefore, the record is considered complete.

Section 212(a)(6)(B) of the Act provides, in pertinent part:

- (B) Failure to attend removal proceedings.—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 on January 5, 1989, the applicant entered the United States without inspection. On January 19, 1994, the applicant filed a Request for Asylum in the United States (Form I-589). On April 17, 1998, a Notice to Appear (NTA) was issued against the applicant. On July 8, 1998, an immigration judge ordered the applicant removed *in absentia* from the United States. In September 2007, the applicant departed the United States. The applicant does not contest these facts. 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 (5) years of her departure.

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 her removal proceeding. *See* Memo from [REDACTED] and [REDACTED], 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 her 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(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.

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 the 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 September 2012. 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.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. 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.