



U.S. Citizenship
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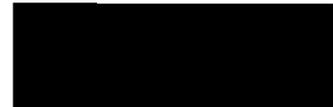
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DATE: JUN 21 2012

OFFICE: GUATEMALA CITY



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:



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.

Thank you,

f.d.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Guatemala City, Guatemala. 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 Guatemala who entered the United States without admission or parole on November 1, 2000 and placed into immigration proceedings. On July 13, 2001, the applicant failed to appear for proceedings and was ordered removed in absentia on that date. The applicant did not depart from the United States until May 1, 2009. The applicant 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 readmission within ten years of his last departure from the United States. The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), as an alien previously removed; 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 his subsequent removal. It is noted that the applicant has not filed a Form I-212, Application for Admission to Reapply for Admission Into the United States After Deportation or Removal. The applicant is a beneficiary of an approved Petition for Alien Relative, as a spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and determined the applicant is statutorily inadmissible to the United States for five years due to his failure to attend removal proceedings, and denied the application accordingly. *See Decision of the Field Office Director*, dated April 30, 2010.

On appeal, the applicant's spouse asserts that she is suffering from extreme financial and emotional hardship in the absence of the applicant. The applicant's spouse further asserts that she would suffer extreme hardship if she had to relocate to Guatemala because of medical and financial issues and would have to leave behind her ties in the United States.

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 admission or parole on November 1, 2000. On July 13, 2001, the applicant was ordered removed *in absentia* after he failed to appear at a removal hearing. The applicant departed the United States on May 1, 2009. The applicant does not contest these facts on appeal. 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 his 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 his removal proceeding. *See* Memorandum 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* (March 3, 2009).

The instant appeal relates to a Form I-601 application for a waiver of inadmissibility arising under sections 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 his failure to appear in removal proceedings. Since the applicant did not satisfy the requirements of this exception, he remains inadmissible under section 212(a)(6)(B) of the Act. 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.

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.