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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 **MAY 15 2012** Office: GUATEMALA CITY, GUATEMALA 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 (the Act), 8 U.S.C. section 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 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. 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. She was found to be inadmissible to the United States pursuant to 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 one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen and has two U.S. citizen children. She 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 8, 2010. The Field Office Director also found the applicant to be inadmissible pursuant to section 212(a)(6)(B) of the Act as she had failed to appear at her immigration hearing.

On appeal, counsel for the applicant asserts that the Field Office Director failed to consider the totality of the hardship impacts on the applicant's spouse, and that sufficient evidence has been submitted in order to establish that the applicant's spouse will experience extreme hardship due to the applicant's inadmissibility. *Form I-290B*, dated March 11, 2010.

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.

The record indicates that the applicant entered the United States without inspection in 1990. The applicant filed an asylum application, which was denied on May 27, 1998 by an immigration judge who also ordered the applicant removed *in absentia*. The applicant remained in the United States until April 28, 2008. Therefore, the applicant accrued unlawful presence from May 28, 1998, the day after the immigration judge issued his decision, until April 28, 2008, the date on which she departed the United States. As the applicant accrued more than one year of unlawful presence and is now seeking admission within ten years of her 2008 departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 indicates that the applicant failed to appear at her removal proceeding on May 27, 1998, and was ordered removed *in absentia* by an immigration judge. The applicant remained in the United States until April 28, 2008.

The AAO notes that there is no statutory waiver available for a section 212(a)(6)(B) inadmissibility. However, an alien is not inadmissible under section 212(a)(6)(B) of the Act if he or she can establish that there was a "reasonable cause" for failure to attend the 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* 13 (March 3, 2009). In the present case, the record reflects that the immigration judge who presided over the applicant's May 27, 1998 hearing found that the applicant had been notified of the proceeding and the consequences of failing to appear for other than exceptional circumstances. Accordingly, the AAO concludes that the Field Office Director's finding of inadmissibility under section 212(a)(6)(B) of the Act is appropriate and that the applicant is inadmissible to the United States until April 29, 2013, five years from the date of her 2008 departure. The applicant does not contest this finding.

As no visa application can be approved for the applicant until the five-year bar under section 212(a)(6)(B) of the Act has expired, the AAO finds that no purpose would be served by considering her eligibility for a waiver under section 212(a)(9)(B)(v) of the Act at this time. Accordingly, the appeal will be dismissed.

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 rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here the applicant has not met that burden.

ORDER: The appeal is dismissed.