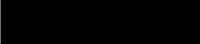




U.S. Citizenship  
and Immigration  
Services

H6



DATE: OFFICE: SAN SALVADOR, EL SALVADOR FILE: 

IN RE: **NOV 09 2012** Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and 1182(a)(9)(A)(iii)

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 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601 waiver application and the Form I-212 application for permission to reapply for admission were concurrently denied by the Field Office Director, San Salvador, El Salvador and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of [REDACTED] who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality 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 10 years of her last departure from the United States. The applicant was found to be additionally inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien ordered removed under section 240 or any other provision of law. The record supports the inadmissibility findings, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(A)(ii) of the Act. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and permission to reapply for admission into the United States within 10 years of her departure under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with her U.S. citizen spouse and lawful permanent resident children.

The field office director found that the applicant is additionally inadmissible under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B) for failing to attend her removal proceeding without reasonable cause. The field office director concluded that the applicant is statutorily inadmissible to the United States for failing to attend her removal proceedings on July 18, 2006, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The field office director concurrently denied the Application for Permission to Reapply for Admission (form I-212) as a matter of discretion, because granting the permission would serve no purpose. *See Decision of the Field Office Director*, dated April 28, 2011.

On appeal, the applicant's spouse asserts that he has been suffering and will continue to suffer extreme hardship if the waiver is not granted. *See Form I-290B*, Notice of Appeal or Motion, received May 24, 2011.

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 May 1, 2006. She was subsequently placed in removal proceedings and issued a notice to appear before an immigration judge. The applicant failed to provide a telephone number and complete address for the record. On June 5, 2006, the applicant was ordered to appear before an immigration judge on July 18, 2006. The applicant failed to attend her removal proceeding as

directed and no reasonable cause was presented for her failure to appear. Accordingly, on July 16, 2006, the immigration judge ordered the applicant removed *in absentia*. The applicant departed the United States voluntarily on March 26, 2009. 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 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.

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 March 2009, 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. Because the applicant is statutorily ineligible for relief under 212(a)(6)(B), no purpose would be served in adjudicating the applicant's waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

The AAO notes that the field office director denied the applicant's Form I-212 application in the same decision denying the applicant's Form I-601 application. The AAO has dismissed the appeal of the Form I-601 application. *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 remains inadmissible under sections 212(a)(6)(B) and 212(a)(9)(B)(i)(II) 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 her Form I-601 waiver application. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.