



U.S. Citizenship
and Immigration
Services

[REDACTED]

#6

Date: **OCT 05 2012** Office: GUATEMALA CITY, GUATEMALA

File: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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 in accordance with the instructions on 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 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 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 her last departure from the United States and under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend her removal proceedings. The applicant is the spouse of a U.S. citizen and she seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated October 18, 2010, the field office director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility. The field office director also found the applicant inadmissible under section 212(a)(6)(B) of the Act, for failing to attend her removal proceedings. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated November 13, 2010, counsel states that the applicant's waiver application was erroneously denied due to a finding of no extreme hardship and that the applicant is providing additional documentation on appeal.

The applicant entered the United States without inspection and on April 18, 2004 was apprehended by Border Patrol Agents approximately .25 miles from the Eagles Pass, Texas, Port of Entry. On June 17, 2004, the applicant was scheduled to appear before an immigration judge for removal proceedings. The applicant failed to appear for this hearing and she was ordered removed in absentia. On April 17, 2007 the applicant filed a Motion to Reopen her removal order, which was denied on December 13, 2007. On January 1, 2008, the applicant filed an appeal with Board of Immigration Appeals (BIA), which was denied on April 21, 2009. The applicant states that she departed the United States on January 22, 2010. Therefore, the applicant accrued unlawful presence from April 2004 until January 2010. In applying for an immigrant visa, the applicant is seeking admission within ten years of her January 22, 2010 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(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 AAO also finds that the applicant is currently subject to section 212(a)(6)(B) of the Act for failing to attend her removal proceedings, for which there is no waiver of inadmissibility.

Section 212(a)(6)(B) of the Act states:

(B) 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.

As stated above, the applicant entered the United States without inspection in April 2004, was apprehended, and placed in removal proceedings. On June 17, 2004, the applicant failed to appear at her removal proceeding and was ordered removed in absentia by the immigration judge. The applicant did not depart the United States until January 22, 2010. Thus, the applicant is inadmissible under section 212(a)(6)(B) of the Act until January 23, 2015 with no eligibility for a waiver of this ground of inadmissibility.

Thus, as the applicant is currently inadmissible under section 212(a)(6)(B) of the Act and is not eligible for a waiver, no purpose would be served in discussing her eligibility for a waiver of her ground of inadmissibility under section 212(a)(9)(B) of the Act.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.