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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 05 2013 Office: MONTERREY, MEXICO File:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Monterrey, Mexico. 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 Mexico. He 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 admission within 10 years of his last departure from the United States; 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 five years of his subsequent removal. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v), 8 U.S.C. §§ 1182(a)(9)(B)(v). The applicant has also filed a Form I-212 application for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The Field Office Director denied the *Application for Waiver of Grounds of Inadmissibility* (Form I-601) based on a finding that under section 212(a)(6)(B) of the Act the applicant is statutorily inadmissible to the United States for five years due to his failure to attend removal proceedings on January 19, 2011, and he further concluded that the applicant had failed to establish extreme hardship to a qualifying relative. The Field Office Director also denied the applicant's *Application for Permission to Reapply for Admission into the United States after Deportation or Removal* (Form I-212) as a matter of discretion stating that it would serve no purpose because he is not eligible for a waiver.

On appeal, counsel asserts that the Field Office Director erred in his conclusion that the applicant's qualifying relative would not experience extreme hardship and that the denial of the Form I-601 due to the lack of an available waiver for inadmissibility under section 212(a)(6)(B) of the Act was improper. Counsel contends that the field office director's determination mischaracterizes evidence of extreme hardship, and was erroneous in concluding that the applicant was subject to inadmissibility under section 212(a)(6)(B) of the Act. *Form I-290B,* received February 19, 2011.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; statements from the applicant's children; a psychological evaluation of the applicant's spouse by ; copies of birth and marriage certificates for the applicant's children and spouse; a statement from , M.D., dated October 2, 2009, pertaining the applicant's spouse; copies of bills related to medical services; background articles on Glaucoma; a property deed for the applicant's spouse's property; copies of money transfer receipts, income tax returns and a social security statement for the applicant's spouse; and documents related to the applicant's prior removal proceeding. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 in 1985. The applicant was entered into removal proceedings and a hearing was set for July 1, 1999. The applicant failed to attend a removal proceeding and he was ordered deported *in absentia*. Subsequent motions to reopen were dismissed and a warrant for removal/deportation was issued on October 21, 2003.

Counsel asserts on appeal that the applicant's departure in January 2010 in order to attend his immigrant visa interview was a self-deportation, and that the Field Office Director failed to elaborate on the applicant's inadmissibility under section 212(a)(6)(B) of the Act.

There is no statutory waiver available for 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 or her removal proceeding. The instant appeal relates to a Form I-601 application for a waiver of inadmissibility arising under sections 212(g), (h), (i) or (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's appellate authority in this case is limited to those matters that are within the scope of the Form I-601 waiver application. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).[1] The AAO cannot exercise appellate jurisdiction over additional matters on its own volition, or at the request of an applicant or petitioner. As a "statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy," the creation of appeal rights for adjustment application denials meets the definition of an agency "rule" under section 551 of the Administrative Procedure Act. The granting of appeal rights has a "substantive legal effect" because it is creating a new administrative "right," and it involves an economic interest (the fee). "If a rule creates rights, assigns duties, or imposes obligations, the basic tenor of which is not already outlined

---

[1] Although 8 C.F.R. § 103(f)(3)(iii), as in effect on February 28, 2003, was subsequently omitted from the Code of Federal Regulations, courts have recognized that DHS continues to delegate appellate authority to the AAO consistent with that regulation. *See U.S. v. Gonzalez & Gonzalez Bonds and Insurance Agency, Inc.*, 728 F.Supp.2d 1077, 1082- 1083 (N.D. Cal. 2010); *see also Rahman v. Napolitano*, 814 F.Supp.2d 1098, 1103 (W.D. Washington 2011).

in the law itself, then it is substantive." *La Casa Del Convaleciente v. Sullivan*, 965 F.2d 1175, 1178 (1st Cir. 1992). All substantive or legislative rule making requires notice and comment in the Federal Register.

Under 8 C.F.R.§ 103.1(f)(3)(iii)(F) (as in effect on February 28, 2003), the AAO has authority to adjudicate "[a]pplications for waiver of certain grounds of excludability [now inadmissibility] under § 212.7(a) of this chapter." 8 C.F.R. § 212.7(a)(1) currently provides that an alien who is inadmissible and eligible for a waiver may apply for a waiver on a form designated by U.S. Citizenship and Immigration Services (USCIS) in accordance with the form instructions. A waiver, if granted, applies to those grounds of inadmissibility and "to those crimes, events or incidents specified in the application for waiver." 8 C.F.R. § 212.7(a). The form instructions for the Form I-601,[2] to which 8 C.F.R. § 212.7(a) refers, further defines the classes of aliens who may file a Form I-601, and the form itself provides a list of each ground of inadmissibility that can be waived, allowing the applicant to check a box next to those grounds for which the applicant seeks a waiver. As there is no statutory basis to waive inadmissibility under section 212(a)(6)(B) of the Act, neither the Form I-601 nor the instructions for Form I-601 list this ground of inadmissibility.

The object of the Form I-601 waiver application, in the context of an application for an immigrant visa filed at a consulate or embassy abroad, is to remove inadmissibility as a basis of ineligibility for that visa. An alien is not required to file a separate waiver application for each ground of inadmissibility, but rather one application that, if approved, extends to all inadmissibilities specified in the application. However, where an alien is subject to an inadmissibility that cannot be waived, approval of the waiver application would not have the intended effect. Thus, no purpose is served in adjudicating such a waiver application, and USCIS may deny it for that reason as a matter of discretion. *Cf. Matter of J- F-D-*, 10 I&N Dec. 694 (Reg. Comm. 1963).

Counsel addresses the decision of the Field Office Director and asserts that the applicant is not inadmissible under section 212(a)(6)(B) of the Act. As the AAO lacks jurisdiction to review inadmissibility under section 212(a)(6)(B) of the Act, we will not evaluate the facts as presented and find that no purpose is served in adjudicating the applicant's application for a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act.

ORDER: The appeal is dismissed.

---

[2] http://www.uscis.gov/files/form/i-601instr.pdf