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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

DATE: APR 24 2013

OFFICE: SANTO DOMINGO

FILE [REDACTED]

IN RE: APPLICANT: [REDACTED]

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:

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 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,

A handwritten signature in cursive script that reads "Georgia Papas for".

Ron Rosenberg, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Form I-601 Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Santo Domingo, Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the field office for further action.

The applicant is a native and citizen of the Dominican Republic. She was found inadmissible 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 more than one year. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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), in order to return to the United States. As the applicant also was ordered removed from the United States, she is inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), and must request permission to reapply for admission.

The Field Office Director determined that the applicant had not established extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated September 13, 2012.

On appeal, the applicant asserts that her qualifying spouse would suffer medical and psychological hardships if she remained in the Dominican Republic or he relocated there to be with her. She also indicates that her qualifying spouse would face “inconvenient” conditions in the Dominican Republic, including crime, power outages, contaminated foods and lack of water, good health care and medicines.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant was found inadmissible 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 more than one year. The applicant entered the United States prior to April 1, 1997, and was removed on July 30, 2010.<sup>1</sup> She accrued over one year of unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until July 30, 2010, when she departed the United States.

The record also reflects that the applicant was removed *in absentia* by an immigration judge for her failure to appear in court on June 9, 2008. Thereafter, the applicant moved to reopen proceedings and the immigration judge denied her motion on July 8, 2008. The Board of Immigration Appeals subsequently affirmed the immigration judge’s decision on June 9, 2009, indicating that the applicant failed to present sufficient evidence to establish that she failed to appear for her hearing

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<sup>1</sup> The applicant’s entry date is not clear from the record, though the record is consistent that she entered the United States without inspection. The Form I-130 notes that the applicant entered on January 1, 1997. The Form I-601, Application for Waiver of Grounds of Inadmissibility indicates that she entered on December 8, 1997. Her Form I-862, Notice to Appear, charges her with entering in August 1999, and the record shows the applicant testified in court to entering in 1996. These inconsistencies in her entry date, however, do not affect the inadmissibility determination.

due to "exceptional circumstances." The applicant has not contested these facts but has filed a waiver of inadmissibility to overcome inadmissibility under section 212(a)(9)(B)(v) 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.

Based on the applicant's failure to attend her hearing on June 9, 2008, it appears that she may be inadmissible under section 212(a)(6)(B) of the Act.

There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(6)(B) of the Act. However, as noted in the statute, an alien is not inadmissible under section 212(a)(6)(B) of the Act if the alien can establish that there was reasonable cause for failure to attend her removal proceeding. There is no indication in the record that the applicant's inadmissibility under section 212(a)(6)(B), or possible reasonable cause for failure to appear, has been examined.

As there is no waiver of this ground of inadmissibility, the AAO lacks jurisdiction to review the issue of reasonable cause. The matter is, therefore, remanded to the Field Office Director for a determination on the applicant's inadmissibility under section 212(a)(6)(B) of the Act. If the applicant is found to be inadmissible under section 212(a)(6)(B) of the Act, a new decision on the waiver application shall be rendered denying the waiver application, as no purpose would be served in granting a waiver to an applicant who has other grounds of inadmissibility that cannot be waived. If the waiver application is denied for this reason no further action will be required of the AAO. If, however, the applicant is not found to be inadmissible under section 212(a)(6)(B) of the Act, the matter shall be returned to the AAO in order to adjudicate the present appeal.

**ORDER:** The appeal is remanded as discussed above.