



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 30 2013** OFFICE: SAN SALVADOR (PANAMA CITY) 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), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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,

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, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded for further action.

The applicant is a native and citizen of Colombia. 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 accrued over one year of unlawful presence in the United States and seeking admission within 10 years of her last departure, and section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), as an alien previously removed. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant 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 reside in the United States with her spouse.

The Field Office Director determined that the applicant had not established extreme hardship to a qualifying relative and denied the application on September 25, 2012.

On appeal, counsel asserts that the Field Office Director failed to review all of the evidence submitted to establish extreme hardship and confused the extreme hardship and discretionary waiver standards. *Form I-290B*, received November 2, 2012.

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 entered the United States without inspection in 2003. She was detained for a period of 22 days and released on supervised parole in order to file an application for asylum. The applicant's asylum application was denied and she was ordered to appear for a removal proceeding. The applicant failed to appear for her removal proceeding and was ordered removed *in absentia*. The applicant remained in the United States, and in 2009 married her current spouse and had a son. The applicant departed the United States in 2010 to return to Colombia. 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 removal hearing and her subsequent departure while a removal order was outstanding, 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.