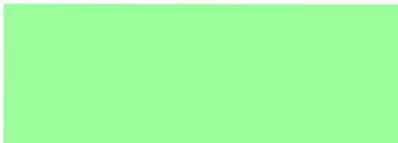




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 27 2013** OFFICE: LIMA, PERU

FILE: 

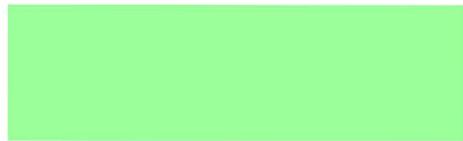
IN RE:

APPLICANT: 

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
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, Lima Peru. On appeal, Administrative Appeals Office (AAO) remanded the matter to the Field Office Director. The matter is now again before the AAO. The appeal will be dismissed.

The applicant is a native and citizen of Brazil 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 admission within 10 years of his last departure from the United States. 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). The applicant has also filed an 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. *See I-601 Decision of Field Office Director*, January 4, 2012. 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 of his inadmissibility under section 212(a)(6)(B) of the Act. *See Form I-212 Decision of Field Office Director*, January 4, 2012.

On appeal, counsel asserted that the applicant demonstrated reasonable cause for his failure to attend removal proceedings. Counsel contends that the Field Office Director's determination of inadmissibility under section 212(a)(6)(B) of the Act was erroneous, and that the applicant was not given notice of his hearing date because of an incorrect mailing address provided to United States Citizenship and Immigration Services (USCIS) at the time. *Form I-290B*, received January 31, 2012.

The AAO found on appeal that it did not have appellate authority to decide whether the applicant qualified for a "reasonable cause" exception to inadmissibility under section 212(a)(6)(B) of the Act. *See AAO Decision*, September 10, 2012. The AAO further indicated that the Department of State had jurisdiction over whether the applicant met the requirements for the "reasonable cause" exception. *Id.* The AAO consequently remanded the matter to the Field Office Director for transmission to the consular official with jurisdiction over the applicant's immigrant visa application for a determination of inadmissibility under section 212(a)(6)(B) of the Act. *Id.*

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 17, 2000. On [REDACTED] 2000, the applicant was released on his own recognizance and ordered to report to the [REDACTED] in Boston, Massachusetts, to calendar his hearing before an immigration judge. *Form I-220A, Order to Release on Recognizance*, [REDACTED] 2000. The applicant failed to report his mailing address to the Officer in Charge in Boston, Massachusetts, and an immigration judge subsequently ordered him removed *in absentia* after he failed to appear at his removal hearing. The applicant was removed from the United States on September 27, 2010. Based on these facts, the Field Office Director determined that the applicant is 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 his removal.

Counsel contends that the consulate had not decided whether the applicant qualified for the "reasonable cause" exception to inadmissibility under section 212(a)(6)(B) of the Act, and that it was inappropriate for USCIS to decide that matter as there is no waiver of inadmissibility under that section of the Act. After the AAO remanded the matter, the consular official with jurisdiction over the applicant's immigrant visa application found the applicant did not demonstrate he had reasonable cause for failing to attend his removal proceedings, and that he remains inadmissible under section 212(a)(6)(B) of the Act. *See letter from Field Office Director, December 21, 2012.*

There is no statutory waiver of available for the ground of inadmissibility arising under section 212(a)(6)(B) of the Act, and the applicant will not be admissible until five years after the date of his last departure from the United States. As such, 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.

The AAO notes that the Field Office Director also denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212). *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 is inadmissible under section 212(a)(6)(B) of the Act no purpose would be served in granting the applicant's Form I-212.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.