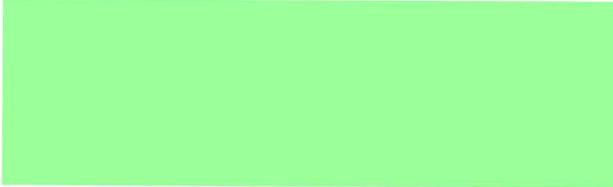


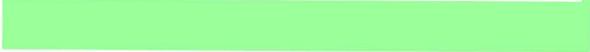


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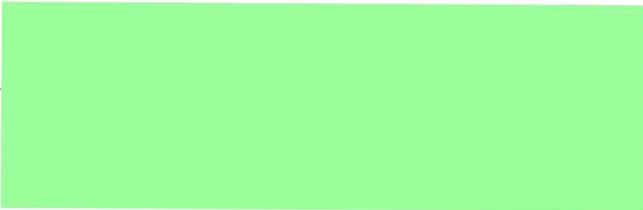
Date: **FEB 25 2013** Office: **BANGKOK, THAILAND**

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 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 with the field office or service center that originally decided your case by filing a 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 District Director, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the District Director for further action.

The applicant is a native and citizen of Bangladesh. 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 one year or more and seeking admission within 10 years of his last departure from the United States. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant, through counsel, seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(9)(B)(v), in order to reside in the United States with his wife and children.

The District Director determined that the applicant had not established extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the District Director*, dated March 4, 2011.

On appeal, counsel asserts the U.S. Citizenship and Immigration Services (USCIS) correctly determined the applicant's spouse would suffer extreme hardship upon relocation to Bangladesh, but erred in determining she would not suffer extreme hardship upon separation or that the applicant does not warrant a favorable exercise of discretion given the totality of the supporting documentary evidence and the applicable law.

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 the applicant entered the United States without inspection by U.S. immigration officials about June 17, 2000. On September 7, 2000, the applicant, with the assistance of previous counsel, presented himself to U.S. immigration officials and was placed in removal proceedings upon the issuance of a Notice to Appear (NTA). On December 5, 2001, the Immigration Judge ordered the applicant removed *in absentia* from the United States. Subsequently, the applicant motioned the Immigration Court to reopen his removal proceedings, indicating he did not receive notice of his hearing date. On April 3, 2002, the Immigration Judge denied the Motion to Reopen. Subsequently, the applicant again motioned the Immigration Court to reopen his removal proceedings. On November 22, 2004, the Immigration Judge denied the applicant's Motion to Reopen, indicating the applicant filed motions beyond the regulatory limitations. The applicant, through current counsel, filed an appeal to the Board of Immigration Appeals (the BIA), and the BIA dismissed the applicant's appeal on October 20, 2005. The applicant then filed an appeal with the U.S. Third Circuit Court of Appeals, which denied his petition for review on April 13, 2007. On June 10, 2008, the applicant was removed from the United States, and has remained outside the United States to date.

The applicant accrued unlawful presence from June 17, 2000, until June 10, 2008; a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant

(b)(6)

to section 212(a)(9)(B)(i)(II) of the Act. 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 his hearing on December 5, 2001, it appears that he 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 his 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 District 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.