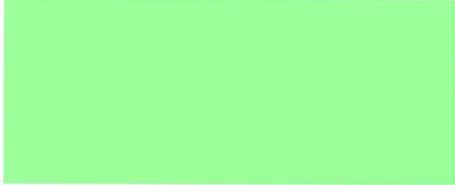




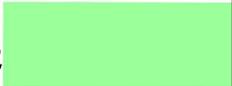
U.S. Citizenship
and Immigration
Services

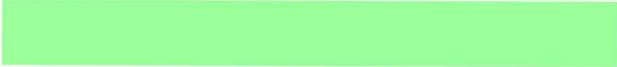
(b)(6)



DATE: **FEB 25 2013**

OFFICE: NEW DELHI, INDIA

FILE 

IN RE: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and 1182(a)(9)(A)(iii)

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 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 waiver application and the Form I-212 application for permission to reapply for admission were concurrently denied by the Field Office Director, New Delhi, India and are now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the field office director for further action consistent with this decision.

The applicant is a native and citizen of Bangladesh who was found to be inadmissible to the United States under 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 readmission within 10 years of his last departure. The applicant was found to be additionally inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien ordered removed under section 240 or any other provision of law. The record supports the inadmissibility findings, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(A)(ii) of the Act. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and permission to reapply for admission into the United States within 10 years of his departure under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his U.S. citizen spouse and child.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated August 11, 2011. The field office director concurrently denied the Application for Permission to Reapply for Admission (Form I-212) as a matter of discretion, because granting the permission would serve no purpose. *Id.*

On appeal, the applicant asserts that extreme hardship will be suffered by a qualifying relative if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion*, dated August 31, 2011.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Said review has revealed and the record supports a finding that in addition to being inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(A)(ii) of the Act, the applicant may be statutorily inadmissible under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend his removal proceeding on October 12, 2007 without reasonable cause.

The record reflects that the applicant entered the United States without inspection on or about May 12, 1994. He filed an asylum application on June 15, 1994 and was interviewed on June 27, 2007 by an asylum officer who referred the case to an immigration judge. On September 19, 2003 the applicant married his spouse who filed a Form I-130, Petition for Alien Relative, on his behalf on February 18, 2005 which was approved on October 20, 2005. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on August 20, 2007 which was denied on March 26, 2008. When the applicant failed to attend his asylum hearing in removal proceedings on October 12, 2007 the immigration judge ordered him removed *in absentia*. The immigration judge determined that the applicant failed to show good cause for failing to attend the hearing and issued a final order of removal on October 31, 2007. The applicant was apprehended

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by immigration officers on August 1, 2008 and departed the United States voluntarily on October 29, 2008.

Based on the applicant's failure to attend his removal proceedings on October 12, 2007, it appears that he may be inadmissible under section 212(a)(6)(B) of the Act. The applicant has not contested these facts but has filed a waiver of inadmissibility and an application for permission to reapply for admission to overcome his inadmissibility under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(A)(ii) 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.

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 will, therefore, be 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.

The AAO notes that the field office director denied the applicant's Form I-212 application in the same decision denying the applicant's Form I-601 application. *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. Should the field office director determine that the applicant is statutorily inadmissible under section 212(a)(6)(B) of the Act, no purpose would be served in adjudicating the applicant's Form I-212 application. Accordingly, any new decision of the field office director shall also address the Form I-212 application.

ORDER: The matter is remanded as discussed above.