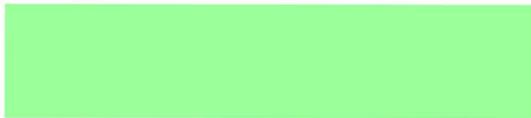




**U.S. Citizenship
and Immigration
Services**

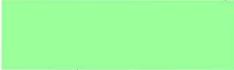
(b)(6)



DATE: **FEB 27 2013**

OFFICE: GUANGZHOU, CHINA

FILE: 

IN RE: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) and 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 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

(b)(6)

DISCUSSION: The waiver application was denied by the Field Office Director, Guangzhou, China and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China who was found to be inadmissible under 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 country for more than one year and seeking readmission within ten years of his departure from the United States. The applicant was also found to be inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for seeking readmission after having been removed under an outstanding order.¹ The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). He 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 live in the United States with his U.S. citizen spouse and children.

When considering the applicant's request for waiver of these grounds of inadmissibility, the director determined that the applicant was also inadmissible to the United States pursuant to section 212(a)(6)(B) of the Act for failing to attend removal proceedings and seeking admission to the United States within five years of his departure from the United States. The application was denied accordingly. *See Decision of Field Office Director*, dated May 17, 2012.

On appeal, counsel asserts that the denial was "rendered without due process," the officer did not inform the applicant of two new grounds of inadmissibility, and the applicant was not given an opportunity to reply before his application was denied. *See Form I-290B, Notice of Appeal or Motion*, received June 8, 2012.

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 July 27, 1991. He filed for asylum on June 7, 1993 and was referred to an immigration judge in 1996. On August 31, 1998, the applicant did not appear for his hearing, although his attorney was present, and the immigration judge ordered him removed *in absentia*. The applicant did not leave

¹ The AAO notes that the director stated in his decision that the applicant should file Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212), if he seeks admission within ten years of his last departure, for the inadmissibility under section 212(a)(9)(A). Though the record contains the applicant's Form I-212, it is unclear whether the application was properly filed or adjudicated. This issue, however, is not determinative in the instant appeal, because the applicant also is mandatorily inadmissible under another section of the Act for which no waiver is available.

the United States. On February 27, 2007, an immigration judge denied the applicant's motion to reopen proceedings. On April 18, 2008, the Board of Immigration Appeals (Board) affirmed the immigration judge's decision. On April 22, 2009, the Board denied the applicant's motion to reopen proceedings. The applicant was deported to China on November 17, 2009.

Counsel does not contest these facts but argues that the applicant was not given notice of the inadmissibility under section 212(a)(6)(B) and an opportunity to reply before the director denied the applicant's waiver. Constitutional issues of due process are not within the appellate jurisdiction of the AAO, therefore this assertion will not be addressed in the present decision.

There is no statutory waiver of available for the ground of inadmissibility arising under section 212(a)(6)(B) of the Act.

The object of a waiver application, in the context of an application for an immigrant visa filed at a consulate or embassy abroad, is to remove inadmissibility as a basis of ineligibility for that visa. An alien is not required to file a separate waiver application for each ground of inadmissibility, but rather one application that, if approved, extends to all inadmissibilities specified in the application. However, where an alien is subject to an inadmissibility that cannot be waived, approval of the waiver application would not have the intended effect. Thus, no purpose is served in adjudicating such a waiver application, and USCIS may deny it for that reason as a matter of discretion. *Cf. Matter of J- F- D-*, 10 I&N Dec. 694 (Reg. Comm. 1963).

As the applicant is clearly inadmissible under section 212(a)(6)(B) of the Act, for which there is no waiver, the AAO finds that no purpose is served in adjudicating the applicant's application for a waiver of inadmissibility pursuant to section 212(9)(B)(i)(II) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to overcome the basis of denial of his Form I-601 waiver application.

ORDER: The appeal is dismissed.