



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JAN 09 2013

Office: TEGUCIGALPA, HONDURAS

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)

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, Tegucigalpa, Honduras. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras. 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 more than one year and seeking admission within 10 years of his last departure from the United States and to section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend removal proceedings and seeking admission to the United States within 5 years of his subsequent removal. 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).¹

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 on November 10, 2005. See *Decision of Field Office Director*, dated February 3, 2012.

On appeal, counsel asserts that the Field Office Director erred in denying the applicant's waiver for his unlawful presence and that sufficient evidence was provided to warrant an approval of his waiver.

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 May 14, 2005 at Roma, Texas, was apprehended by the U.S. Border Patrol and placed into removal proceedings. On November 10, 2005, the applicant was ordered removed *in absentia* after he failed to appear at his removal hearing. The applicant remained in the United States until March 9, 2011. The applicant does not contest these facts on appeal. The applicant is, therefore, 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 departure.

¹ The applicant was also found inadmissible pursuant to section 212(a)(9)(A) of the Act, as an alien with a removal order. He seeks, and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), in order to reside in the United States with his U.S. citizen spouse. The Field Office Director denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, in a separate decision. The AAO notes that Form I-290B, Notice of Appeal or Motion, indicates under Part 2 that the appeal relates to "Form I-601 & I-212"; however, the applicant filed only one appeal.

(b)(6) There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(6)(B) of the Act. However, an alien is not inadmissible under section 212(a)(6)(B) of the Act if the alien can establish that there was a "reasonable cause" for failure to attend his removal proceeding. See Memo. from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators* 13 (March 3, 2009).

The AAO finds that the applicant's inadmissibility under section 212(a)(6)(B) of the Act can properly be used by the Field Office Director as a basis for denying the applicant's Form I-601, as no purpose is served in adjudicating a waiver application where a visa application cannot be approved because of a separate non-waivable ground of inadmissibility. Since the applicant does not satisfy the requirements of a "reasonable cause" exception, he remains inadmissible under section 212(a)(6)(B) of the Act until March 9, 2016. Because no purpose would be served at this time in adjudicating a waiver of the applicant's inadmissibility under section 212(a)(9)(B)(v) of the Act, the applicant's Form I-601 was properly denied.

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. The appeal will therefore be dismissed and the Form I-601 will be denied.

ORDER: The appeal is dismissed.