

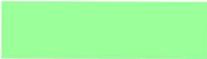
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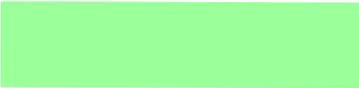
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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

DATE: **MAY 29 2013** Office: ANAHEIM

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:

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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, San Salvador, El Salvador, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador 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 from the United States. The applicant was also found to be inadmissible under section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(3)(A)(ii), for security and related grounds (seeking to enter the United States to engage solely, principally, or incidentally in unlawful activity). The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse.

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)(3)(A)(ii) of the Act the applicant is statutorily inadmissible to the United States and ineligible for any waiver of inadmissibility. *See Decision of Field Office Director*, dated August 8, 2012.

On appeal, the applicant first references that the USCIS ignored a number of hardship factors with respect to his U.S. citizen wife. The applicant further asserts that he has never been involved in gangs. *See Form I-290B*, dated September 5, 2012.

Section 212(a) of the Act provides, in pertinent part:

(3) Security and Related Grounds

(A) In General

Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in-

(ii) any other unlawful activity...is inadmissible.

There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(3)(A)(ii) of the Act. The applicant asserts that he has never been involved in gangs. However, the instant appeal relates to a Form I-601 application for a waiver of inadmissibility arising under section 212(a)(9)(B)(i)(II) of the Act. Inadmissibility under section 212(a)(3)(A)(ii) of the Act is not the subject of the Form I-601 and is not within the subject matter jurisdiction of the AAO to adjudicate with this appeal.

The AAO finds that the applicant's inadmissibility under section 212(a)(3)(A)(ii) 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 due to a separate non-waivable ground of inadmissibility. The AAO lacks jurisdiction to reconsider the Field Office Director's decision regarding the applicant's inadmissibility under section 212(a)(3)(A)(ii) of the Act. Because no purpose would be served in adjudicating a waiver of the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, the applicant's Form I-601 was properly denied. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.