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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: **JAN 30 2014** OFFICE: LIMA, PERU

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601 Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Lima Peru. On appeal, Administrative Appeals Office (AAO) remanded the matter to the Field Office Director. After the Field Office Director found the applicant to be inadmissible under section 212(a)(6)(B) of the Act, the AAO dismissed the appeal. The matter is now again before the AAO. The motion will be granted, but the underlying application remains denied.

The applicant is a native and citizen of Brazil who 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. 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). The applicant has also filed an application for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

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. *See I-601 Decision of Field Office Director*, January 4, 2012. The Field Office Director also denied the applicant's Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) as a matter of discretion, stating that it would serve no purpose because he is not eligible for a waiver of his inadmissibility under section 212(a)(6)(B) of the Act. *See Form I-212 Decision of Field Office Director*, January 4, 2012.

On appeal, the AAO determined it did not have jurisdiction to determine whether the applicant qualified for a "reasonable cause" exception to inadmissibility under section 212(a)(6)(B) of the Act. *See AAO Decision*, September 10, 2012. The AAO consequently remanded the matter to the Field Office Director for transmission to the consular official with jurisdiction over the applicant's immigrant visa application for a determination of inadmissibility under section 212(a)(6)(B) of the Act. *Id.* After the AAO remanded the matter, the consular official found the applicant did not demonstrate he had reasonable cause for failing to attend his removal proceedings, and that he remains inadmissible under section 212(a)(6)(B) of the Act. *See letter from Field Office Director*, December 21, 2012. The AAO consequently dismissed the applicant's appeal. *See AAO Decision*, August 27, 2013.

On motion, the applicant's spouse asserts that the applicant should not be inadmissible under section 212(a)(6)(B) of the Act because the first consular officer who reviewed the case found that the applicant had shown reasonable cause existed for missing his removal hearing. The spouse adds that that first consular officer did not impose the failure to appear bar and instead instructed the applicant to file the form I-601 and I-212 applications. The spouse moreover states that the applicant would not have been able to file the applications without the consular officer's approval. A USCIS guidance sheet titled "Filing Certain Waivers of Inadmissibility" is submitted in support.

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.

As stated on appeal, the record reflects that the applicant entered the United States without inspection on or about May 17, 2000. On May 18, 2000, the applicant was released on his own recognizance and ordered to report to the JFK Federal Building in Boston, Massachusetts, to calendar his hearing before an immigration judge. *Form I-220A, Order to Release on Recognizance*, May 18, 2000. The applicant failed to report his mailing address to the Officer in Charge in Boston, Massachusetts, and an immigration judge subsequently ordered him removed *in absentia* after he failed to appear at his removal hearing. The applicant was removed from the United States on September 27, 2010. Based on these facts, the consular officer with jurisdiction over the applicant's immigrant visa application found that the applicant did not demonstrate he had reasonable cause for failing to attend his removal proceedings, and that he remains inadmissible under section 212(a)(6)(B) of the Act. *See letter from Field Office Director, December 21, 2012.*

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, the applicant's spouse has not provided any evidence to support her contention that the applicant was found by a consular officer to have reasonable cause for failing to attend his removal hearing on October 18, 2000. As noted in the Field Office Director's December 21, 2012 letter, the record contains no documentation indicating that the consulate had found the applicant qualified for the reasonable cause exception. Furthermore, the applicant was given opportunities to supplement the record with documentation to demonstrate that a consular officer had found reasonable cause for failing to attend his removal hearing. To this date, the applicant has not supplemented his record with such evidence, nor does the applicant's file contain such a finding. As such, despite the spouse's assertion to the contrary, it has not been established, by a preponderance of the evidence, that the record contains a consular official's finding contrary to the one contained in the December 21, 2012 Field Office Director's letter.

The AAO additionally notes that an applicant may file form I-601 and I-212 applications with USCIS without a consular officer's recommendation. Moreover, inadmissibility under section 212(a)(6)(B) of the Act does not preclude filing such applications, although it may prevent approval of those applications. Furthermore, whether the applicant was removed by immigration officials or whether he departed the United States voluntarily has no bearing on inadmissibility under section 212(a)(6)(B) of the Act, as that section only pertains to inadmissibility for failure to attend a removal proceeding.

Therefore, the AAO affirms that the applicant remains inadmissible under section 212(a)(6)(B) of the Act for a period of five years after his subsequent departure from the United States. Again, as there is no statutory waiver of available for the ground of inadmissibility arising under section 212(a)(6)(B) of the Act, the applicant will not be admissible until five years after the date of his last departure from the United States. As such, we will not evaluate the facts as presented and find that no purpose is served in adjudicating the applicant's application for a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act.

As previously noted, the Field Office Director also denied the applicant's Form I-212 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. As the applicant is inadmissible under section 212(a)(6)(B) of the Act no purpose would be served in granting the applicant's Form I-212.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Consequently, the applicant's motion is granted, but the underlying application remains denied.

**ORDER:** The motion is granted but the underlying application remains denied.