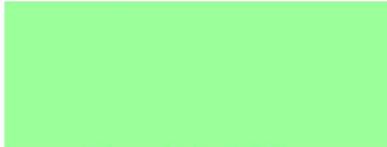


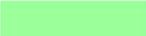


U.S. Citizenship
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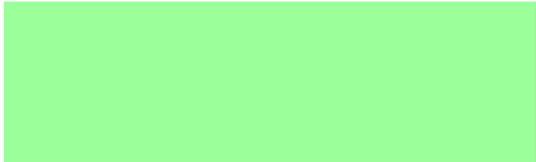


MAR 11 2015

DATE: OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: APPLICANT: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:


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

Ron Rosenberg, Chief
Administrative Appeals Office

DISCUSSION: The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Service Center Director for further action.

The applicant is a native and citizen of Guatemala 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 again seeking admission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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), in order to reside in the United States with her 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 her subsequent removal. The application was denied accordingly. *See Decision of the Director*, dated June 30, 2014.

On appeal the applicant asserts that an Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) has been approved and she is therefore not inadmissible for her failure to appear and order of removal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant entered the United States without inspection on April 3, 2002, and was apprehended by U.S. Border Patrol agents and placed in removal proceedings. On June 24, 2003, the applicant failed to appear for a hearing and was ordered removed in absentia. The applicant did not depart the United States until August 30, 2011. The applicant has not contested these facts, but has filed a waiver of inadmissibility to overcome inadmissibility under section 212(a)(9)(B)(i)(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 her removal proceeding. There is no indication in the record that the applicant's reason for failure to

attend her removal proceeding and possible reasonable cause for failure to appear have 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 is, therefore, remanded to the Service Center Director for a determination on the applicant's inadmissibility under section 212(a)(6)(B) of the Act, including whether she had reasonable cause for failure to attend her removal proceeding. If no reasonable cause for failure to appear is found and the applicant is therefore 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.

ORDER: The appeal is remanded as discussed above.