



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JUL 23 2014** OFFICE: SAN FERNANDO VALLEY

File: [REDACTED]

IN RE: Applicant: [REDACTED]
AKA [REDACTED]

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

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.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Fernando Valley, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible and the underlying waiver application is unnecessary.

The applicant is a native and citizen of El Salvador who filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)(v), because of his unlawful presence in the United States. The applicant is the son of a lawful permanent resident and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant filed a Form I-601 after submitting his application for adjustment of status in order to reside in the United States.

The Field Office Director determined the applicant had not established extreme hardship to a qualifying relative and denied the Form I-601 accordingly. *See Decision of the Field Office Director*, dated September 6, 2012.

The Field Office Director's decision refers to the applicant's waiver under 212(a)(9)(C) of the Act, and in another paragraph, under 212(i) of the Act. The record does not show the applicant is inadmissible for unlawful presence after a previous immigration violation under section 212(a)(9)(C) or for making a material misrepresentation for a benefit under the Act under section 212(a)(6)(C)(i), for which a waiver is available under section 212(i). As a result, considering a U.S. Citizenship and Immigration Services letter advising the applicant to submit Form I-601 based on his unlawful presence and the applicant's corresponding annotation on Form I-601, we will address the agency's finding of inadmissibility under section 212(a)(9)(B)(i)(II) in this appeal.

On appeal, dated October 1, 2012 and received on April 1, 2014, the applicant submits additional documentation to support his contention that his lawful permanent resident mother would suffer financial and psychological hardship because of his inadmissibility. He also submits additional documentation to demonstrate his presence in El Salvador in 1998 and to support his assertion that he was not unlawfully present in the United States for more than six months. *See Applicant's Statement in Support of Form I-290B, Notice of Appeal or Motion* (Form I-290B), dated October 1, 2012.

The record includes, but is not limited to: affidavits by the applicant and his mother; letters of support; documents establishing identity and relationships; and academic, business, financial and medical documents. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects the applicant initially entered the United States without inspection by immigration officials around 1998 and remained until 2010, when he left the United States upon the approval of his request for advance parole.¹ The record also reflects the applicant was subsequently paroled into

¹ Certain applications in the record indicate that the applicant's initial entry without inspection occurred around September 15, 1995. The record does not include an explanation for this discrepancy or show that it affects his eligibility for an immigration benefit.

the United States on July 17, 2010, where he has remained to date. After being paroled he filed his Form I-485, Application to Register Permanent Residence or Adjust Status, on August 25, 2011.

Section 212(a)(9)(B) of the Act provides:

(B) Aliens unlawfully present.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

As stated previously, the record reflects the applicant entered the United States without inspection in 1998. To support his contention that he lived outside of the United States before November 1998, the applicant submits: a copy of a receipt from a business in [REDACTED] El Salvador, indicating the purchase of a bed on July 10, 1998; a copy of a certificate of participation in a computer course, indicating its issuance in [REDACTED] El Salvador in August 1998; a copy of his passport, indicating its issuance in September 1998 by the issuing authority in San Salvador, El Salvador; and a copy of his national identity card, indicating his residence as [REDACTED] El Salvador, issued on October 9, 1998. The record is sufficient to establish the applicant initially entered the United States without inspection by immigration officials after October 9, 1998, or around November 1998, as he asserts.

The record also reflects the applicant was added as a beneficiary to his mother's pending asylum application on April 23, 1999, and it was withdrawn on March 28, 2003. The record includes evidence that the applicant initially filed for temporary protected status (TPS) on September 13, 2006 and has continued to renew his TPS. The applicant accrued unlawful presence from November 1998 through April 22, 1999, a period of less than 180 days. While the record is unclear about whether the applicant applied for asylum as a principal applicant after he became an adult, it appears that the applicant also accrued unlawful presence from March 28, 2003 until September 2006, a period in excess of one year.

Subsequent to the issuance of the Field Office Director's letter dated December 7, 2011, the Board of Immigration Appeals (BIA), in *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), held that an applicant for adjustment of status who left the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act did not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. As stated previously, the

applicant obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States. In accordance with the BIA's decision in *Matter of Arrabally*, the applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant's waiver application is thus unnecessary and the appeal will be dismissed.

ORDER: The appeal is dismissed as the underlying waiver application is unnecessary.