**U.S. Department of Homeland Security**
Citizenship and Immigration Services
*Office of Administrative Appeals*
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

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

H6

[redacted]

DATE: DEC 2 1 2012 OFFICE: DES MOINES, IOWA File: [redacted]

IN RE: [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:

[redacted]

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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Des Moines, Iowa, 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 entered the United States about April 16, 1996.[1] The applicant departed the United States in 2008, based on a grant of advance parole. She was paroled into the United States on March 29, 2008. Upon adjudication of a Form I-485 application for adjustment of status, the Field Office Director found the applicant 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 her last departure. The applicant filed an application for a waiver of inadmissibility in conjunction with her application for adjustment of status in order to reside in the United States with her husband and children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 19, 2010.

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

> (B) ALIENS UNLAWFULLY PRESENT.-
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> > (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> > > (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
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> > > (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.

In *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (BIA) 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. Here, the applicant obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States

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[1] The AAO notes that the record includes evidence that the applicant initially entered the United States without inspection by immigration officials about April 16, 1995.

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.