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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090



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

H6

[REDACTED]

DATE: JUL 20 2012 Office: MIAMI, FL

FILE: [REDACTED]

IN RE: [REDACTED]

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:

[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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Honduras 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 readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated June 8, 2010.

Section 212(a)(9) 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.

The record reflects that the applicant entered the United States on September 16, 1996 without inspection. On March 31, 1999, the applicant filed Form I-821, Application for Temporary Protected Status and was granted Temporary Protected Status (TPS) on November 10, 1999. In February 2009, the applicant departed the United States pursuant to an approved advance parole. She was paroled into the United States on February 15, 2009. On September 21, 2009, the applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status, concurrently with an I-130 Petition for Alien Relative, which was filed on her behalf by her U.S.

citizen spouse. Based on the applicant's history, the Field Office Director found that she accrued unlawful presence from April 1, 1997¹ until she filed her TPS application on March 31, 1999.

In *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (BIA) held that an alien who leaves the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act does 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 pursuant to that grant of advance parole, and was paroled into the United States under her temporary protected status. 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.

¹ No period of unlawful presence prior to the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, is counted when determining inadmissibility under section 212(a)(9)(B) of the Act.