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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 N.W.
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



PUBLIC COPY

[REDACTED]

H6

DATE: **MAY 15 2012** OFFICE: SANTA ANA, CALIFORNIA FILE: [REDACTED]

IN RE: Applicant: [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, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California. The applicant appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The applicant has filed a motion to reopen the AAO decision. The applicant's motion will be dismissed as the applicant is not inadmissible and the underlying waiver application is unnecessary.

The record reflects that the applicant is a native and citizen of Lebanon 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 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 Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated January 4, 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 was admitted to the United States on September 4, 1986, as a B-2 Visitor, valid until March 6, 1987. The applicant did not depart from the United States upon the expiration of her B-2 status. Rather, she filed an Application for Voluntary Departure Under the Family Unity Program (Form I-817) on February 12, 1998. The Form I-817 was approved on March 1, 2001, valid until February 28, 2003. She also filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on November 18, 2004. On August 14, 2005, she departed the United States and returned on September 6, 2005, pursuant to Advance Parole; valid until September 5, 2006. The applicant has remained in the United States to date. The applicant

accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions in the Act, until February 12, 1998, when she filed the Form I-817. She also accrued unlawful presence from March 1, 2003, when her authorized stay under the Family Unity program ended, until November 18, 2004, when she filed the Form I-485; a period in excess of one year.

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 to pursue a pending application for adjustment of 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.