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

[redacted]

H6

DATE: OCT 0 2 2012 OFFICE: SANTA ANA, CA 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Santa Ana, California, and the matter 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 the Philippines 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 ten years of her last departure from the United States. The applicant is the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker, and her mother is a U.S. lawful permanent resident. 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 near her mother.

In a decision dated November 4, 2010, the director concluded that the applicant had failed to establish her U.S. lawful permanent resident mother would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

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-
> >
> > . . .
> >
> > > (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 on December 27, 1996, the applicant was admitted into the United States with a B2 visitor visa valid for six months, until June 26, 1997. The applicant remained in the United States until September 2, 2005. On that date she traveled to the Philippines pursuant to an approved Form I-512, Authorization for Parole of an Alien into the United States. The applicant was inspected and paroled back into the United States on September 12, 2005, pursuant to section 212(d)(5) of the Act, 8 U.S.C. 1182(d)(5), and she has not departed the country since that time. The applicant was found to be inadmissible due to her unlawful presence in the United States for more than one year between June 26, 1997 and April 11, 2002, when she filed a presently pending adjustment of status application.

The Board of Immigration Appeals (Board) held in its recent decision, *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), 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) 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 Board'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.