



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

[REDACTED]

H6

DATE: **OCT 11 2012** Office: RENO, NEVADA

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,

for  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the field office director, Reno, NV, 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 Mexico 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 not established that her qualifying relative spouse will suffer extreme hardship if the applicant is removed from the United States and denied the application accordingly. *See Decision of Field Office Director* dated August 26, 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 applicant entered the United States in April 1988 without inspection and was later granted benefits under the [REDACTED]. The applicant then departed the United States with advance parole in 2004, returning in July 2004. She accrued unlawful presence from April 1, 1997 until she submitted her Application for Family Unity Benefits (Form I-817) on January 15, 2003, a period of more than one year. A subsequent application for Family Unity Benefits was approved on August 29, 2006, and the applicant departed the United States and returned with advance parole on July 30, 2008.

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 resume her status as a beneficiary under the Family Unity Program. 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.