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

U.S. Citizenship and Immigration Services

[redacted]

#6

DATE: OCT 15 2012 OFFICE: HARTFORD, CT FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hartford, Connecticut 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 Brazil 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 being unlawfully present in the United States for more than one year and seeking admission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to return to the United States to live with her spouse.

In a decision dated July 23, 2008 denying the Application for Waiver of Grounds of Inadmissibility, the Field Office Director concluded that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act and had failed to establish that the bar to admission would impose extreme hardship on her U.S. citizen husband, the qualifying relative. *See Field Office Director's Decision*, dated July 23, 2008.

Section 212(a)(9) of the Act states in pertinent part:

> (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.
> >
> > . . . .
>
> (v) **Waiver.** The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

In the present case, the record reflects that the applicant first entered the United States as a B-2 visitor for pleasure on March 26, 1995. Her period of authorized stay expired on September 22, 1995, but U.S. Citizenship and Immigration Services (USCIS) records show that the applicant subsequently departed the United States on an unknown date and re-entered the United States on

July 9, 1998 as a B-1 nonimmigrant visitor. The applicant applied for adjustment of status on June 28, 2003 based on an approved Form I-140 Immigrant Petition for Alien Worker filed by [redacted]. After filing for adjustment of status, the applicant applied for advanced parole and was issued a Form I-512L-Authorization for Parole into the United States on August 5, 2004. The applicant made three subsequent trips to Brazil after having remained in the United States for over one year without authorization: October 2-24, 2004; February 8-20, 2005 and February 7-11, 2006. Each time the applicant returned to the United States from Brazil, she was paroled in to the United States to resume her application for adjustment of status. The adjustment of status application based on the approved Form I-140 was denied on February 7, 2006 since the applicant was found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

On March 14, 2006, the applicant filed another adjustment of status application concurrently with a Form I-130, Petition for Alien Relative filed by her U.S. citizen husband, which was approved on October 6, 2006. The applicant filed a waiver of inadmissibility on June 15, 2007, which was denied on July 23, 2008. The application to adjust status was denied on August 7, 2008. Counsel timely filed an appeal from the denial of the Form I-601 waiver application.

In *Matter of Arrabally*, 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 based on her departures and re-entries into the United States on advance parole between 2004 and 2006.

Although the Field Office Director also concluded that the applicant accrued unlawful presence from "sometime in 1998" until 2003 when her first adjustment application was filed, the record contains no evidence to support that determination. While the applicant entered the United States on July 9, 1998, the record does not show the date of her preceding departure, without which it cannot be determined that she accrued unlawful presence under section 212(a)(9)(B)(i) of the Act. The applicant is not inadmissible under section 212(a)(9)(B)(i) of the Act and her waiver application is thus unnecessary. The appeal will be dismissed.

ORDER: The appeal is dismissed as the underlying waiver application is unnecessary.