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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**



H6

DATE: **SEP 10 2012** OFFICE: SAN DIEGO, CALIFORNIA FILE: 

IN RE: Applicant: 

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:

SELF-REPRESENTED

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 large, stylized handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Diego, California, 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 record reflects that 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 one year or more and seeking admission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and father.<sup>1</sup>

The District 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 District Director*, dated March 25, 2010.<sup>2</sup>

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-

(1) 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

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<sup>1</sup> The AAO notes that at the time of the filing of the applicant's appeal on or about April 24, 2010, the applicant's father was a demonstrated qualifying relative; lawful permanent resident. However, the record reflects that the applicant's father has subsequently naturalized to a U.S. citizen on September 19, 2011.

<sup>2</sup> The AAO notes that it is unclear whether the District Director analyzed extreme hardship to both of the applicant's demonstrated qualifying relatives; his U.S. citizen spouse, and his then. lawful permanent resident father as the District Director's decision states: "You have failed to establish that your departure from the United States would constitute an 'extreme hardship' on your qualifying family member." Nevertheless, as the AAO finds that the applicant's waiver application is unnecessary, the AAO finds that the possible omission by the District Director to analyze extreme hardship to each of the applicant's demonstrated qualifying family members to be harmless error.

(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 initially entered the United States with a B1/B2 Border Crossing Card (BBBCC) on September 30, 2006; valid until November 3, 2006. He failed to timely depart, but filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on October 2, 2009. He subsequently left the United States after December 2, 2009, and returned to the United States pursuant to Advance Parole on December 9, 2009; valid until December 1, 2010. The record further reflects that the applicant has remained in the United States to date. The U.S. Citizenship and Immigration Services (USCIS) denied the applicant's Form I-485 on March 25, 2010. The applicant accrued unlawful presence from November 4, 2006,<sup>3</sup> until October 2, 2009, when he 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.

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<sup>3</sup> The AAO notes that the District Director erroneously indicated that the applicant started to accrue unlawful presence on November 3, 2006, until he filed his Form I-485 on October 2, 2009. As the applicant's BBBCC status was valid until November 3, 2006, he did not start to accumulate unlawful presence until November 4, 2006. The AAO finds the incorrect reference to the commencement date of the applicant's accrual of unlawful presence to be harmless error.