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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

[Redacted]

DATE: **SEP 10 2012**

OFFICE: COLUMBUS, OHIO

FILE: [Redacted]

IN RE: Applicant: [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 waiver application was denied by the Field Office Director, Columbus, Ohio, 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 Pakistan 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 readmission 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 spouse.

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 11, 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 initially admitted to the United States on September 28, 1998, as a B-2 Visitor; valid until March 27, 1999. The applicant did not depart from the United States upon the expiration of his B-2 status. Rather, he filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on April 8, 2003, as the spouse of a U.S. citizen, [REDACTED]. About January 16, 2005, he departed the United States, and returned to the United States on March 31, 2005, pursuant to Advance Parole; valid until March 30, 2006. USCIS denied the applicant's Form I-485 on January 3, 2006, as [REDACTED] failed to appear for the adjustment interview and to provide an explanation for her absence. The applicant and [REDACTED] were divorced on July 20, 2006.

The applicant filed another Form I-485 on September 1, 2006, as the spouse of another U.S. citizen, [REDACTED]. On December 2, 2007, he departed the United States, and returned to the United States around March 2008. USCIS denied the Form I-485 based on the applicant's marriage to [REDACTED] on December 28, 2009.

The applicant accrued unlawful presence from March 28, 1999, until April 8, 2003, when he filed the initial Form I-485; a period in excess of one year. The applicant also accrued unlawful presence from January 3, 2006, until September 1, 2006, when he filed the second Form I-485; a period of more than 180 days but less than 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.