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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 NW
Washington, DC 20529-2090



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

[REDACTED]

H6

DATE: **SEP 28 2012**

Office: LOS ANGELES, CA

FILE: [REDACTED]

IN RE: [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,

A handwritten signature in cursive script, appearing to read "Perry R. Hew".

Perry R. Hew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, 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 El Salvador 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 his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident spouse.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated September 27, 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 issued Authorization for Parole (Form I-512L) for urgent humanitarian reasons or significant public benefit on September 24, 2008. Although the applicant entered the United States without inspection in 1997, his only departure from the United States occurred on October 15, 2008 with advance parole. He subsequently was paroled into the United States on October 26, 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 because of his temporary protected status and 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.

The AAO notes that the applicant was ordered removed *in absentia* on September 25, 1997, and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with his wife. He therefore must file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

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