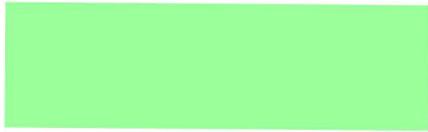


(b)(6)

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

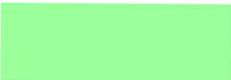


U.S. Citizenship
and Immigration
Services



DATE: AUG 27 2013

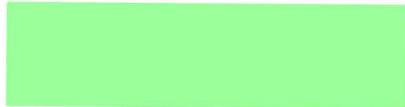
OFFICE: LOS ANGELES, CA

FILE: 

IN RE: 

PETITION: Application for Waiver of Ground 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 PETITIONER:



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 black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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 the underlying waiver application is unnecessary.

The applicant is a native and citizen of Romania who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(9)(B)(i), for having been unlawfully present in the United States. A waiver of a section 212(a)(9)(B) inadmissibility is available under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admissibility would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability, accordingly. *Decision of the Field Office Director*, dated January 3, 2013.

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 . . . 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

In *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (BIA) held that an applicant for adjustment of status who left the United States temporarily pursuant to advance parole under section 212(d)(5) of the Act did not make a departure from the United States within the meaning of section 212(a)(9)(B)(i) of the Act. Here the record, by a preponderance of evidence, indicates that prior to each of her departures from the United States, 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 back into the United States. In accordance with the BIA's decision in *Matter of Arrabally*, the applicant in the present case did not make a departure from the United States for the purposes of section 212(a)(9)(B) of the Act. Accordingly, she is not inadmissible under section 212(a)(9)(B)(i) of the Act. The waiver application is thus unnecessary and the appeal will be dismissed.

However, had the applicant been correctly determined to be inadmissible under section 212(a)(9)(B) of the Act, she would not have been eligible for waiver consideration at the time of the Field Office Director's decision. While the Field Office Director denied the Form I-601 waiver application based on the applicant's failure to establish extreme hardship to a qualifying relative, the AAO does not find the record to demonstrate that the applicant had the qualifying relative – a U.S. citizen or lawful permanent resident spouse or parent – required for waiver consideration under section 212(a)(9)(B)(v) of the Act. The applicant's spouse is neither a U.S. citizen nor a lawful permanent resident and the Form G-325A, Biographic Information, submitted by the applicant indicates that both her parents reside in Romania. The AAO also notes that the Form I-140, Immigrant Petition for Alien Worker, benefitting the applicant was denied by United States Citizenship and Immigration Services (USCIS) on October 31, 2007 and that, on February 1, 2012, the AAO dismissed an appeal of that decision, which was not administratively challenged by the petitioner. Therefore, at the time that the Field Office Director considered the Form I-601, there was no underlying immigrant visa petition on which to base a Form I-601 waiver application and the applicant, if inadmissible, would have been ineligible for waiver consideration on this basis as well.

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