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

(b)(6)

[redacted]

DATE: JAN 07 2013 Office: NEW YORK, NEW YORK [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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act) and the underlying waiver application is unnecessary.

The applicant is a native and citizen of the Dominican Republic who entered the United States in May 2000. The applicant departed the United States in May 2006, August 2009, and December 2011 based on a grant of parole. He was paroled into the United States on May 29, 2006, August 25, 2009, and December 9, 2011. Upon adjudication of the application for adjustment of status, the Field Office Director found the applicant 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 admission within 10 years of his last departure. The applicant filed an application for a waiver of inadmissibility in conjunction with his application for adjustment of status in order to reside in the United States with his U.S. citizen spouse, U.S. citizen daughter, and two lawful permanent resident sons.

In a decision, dated November 29, 2011, the district director found that although the record indicated that the applicant's family would experience some hardship as a result of relocating to the Dominican Republic, the record failed to show that the applicant's wife and children would be forced to relocate. The application was denied accordingly.

Section 212(a)(9)of the Act provides:

> (B) ALIENS UNLAWFULLY PRESENT.-
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> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> (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
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> (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.

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 a grant of parole did 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 parole,

temporarily left the United States pursuant to that grant of parole, and was paroled into the United States. 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.[1]

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

[1] The AAO notes that the record indicates that on April 4, 2003 the applicant was convicted of trespass under New York Penal Law §140.05 and was sentenced to conditional discharge for one year. We find that this conviction does not constitute a crime involving moral turpitude and does not render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. In *Matter of Esfandiary,* 16 I&N Dec. 659 (BIA 1979) malicious trespass was found to involve a crime involving moral turpitude as it involved the intent to commit petit larceny, which is generally a crime involving moral turpitude. At the time of the applicant's conviction, New York Penal Law §140.05 stated "a person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises." Thus, the applicant's trespass conviction under New York Penal Law §140.05 did not involve the intent to commit a crime involving moral turpitude and, as a result, does not constitute a crime involving moral turpitude.