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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: AUG 25 2014 OFFICE: BOSTON, MA 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Boston, Massachusetts, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, and the appeal will be dismissed as the applicant is not inadmissible and the underlying waiver application is unnecessary.

The applicant is a native and citizen of El Salvador who entered the United States without inspection in March 1998. The applicant departed the United States in 2008, and again in 2009 based on grants of advance parole. She was paroled into the United States on July 7, 2008, and on January 11, 2010. 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 her last departure. The applicant filed an application for a waiver of inadmissibility after she filed her application for adjustment of status in order to reside in the United States with her 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 Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated April 30, 2009. The AAO affirmed the Field Office Director's decision on appeal. *AAO Decision,* January 7, 2010.

On motion, filed on February 8, 2010 and received by the AAO on May 21, 2014, counsel states that the applicant and her husband are expecting a child and the decision should be reviewed in light of the new evidence.

The record establishes that the applicant entered the United States without inspection in 1998 and departed pursuant to advance parole on two occasions. This is not contested.

Section 212(a)(9) of the Act provides, in pertinent part:

> (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.

Subsequent to the AAO decision of January 7, 2010 a precedent decision from the Board of Immigration Appeals (BIA) addressed departures on advance parole and the effect on unlawful presence. In *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the BIA held that an applicant for adjustment of status who left the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act 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 advance parole twice, temporarily left the United States pursuant to those grants of advance 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.

ORDER: The motion is granted, and the appeal is dismissed as the underlying waiver application is unnecessary.