U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21035570

Date: JUL. 15, 2022

Appeal of Phoenix, Arizona Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant accrued more than one year of unlawful presence in the United States and consequently became subject to the 10-year bar to readmission described at 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). She now seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act so that she may adjust to lawful permanent resident status. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver when refusal of admission would cause extreme hardship to a qualifying relative. *Id.*

The record indicates, and the Applicant does not dispute, that she entered the United States pursuant to a legacy Form I-586, Nonresident Alien Border Crossing Card (Form I-586), in early 2001 and subsequently remained in the United States until her departure in April 2007, thereby accruing more than one year of unlawful presence and becoming subject to the 10-year bar at section 212(a)(9)(B)(i)(II) of the Act. The record further indicates that, shortly after her departure in April 2007, she reentered the United States using the same Form I-586 and has remained in the country since that time.

The Director of the Phoenix, Arizona Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), concluding that the Applicant was inadmissible under section 212(a)(9)(B)(i) of the Act and the record did not establish that her qualifying relative would experience extreme hardship if the application were denied. The matter is now before us on appeal. We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal as moot.

During the pendency of the Applicant's appeal, USCIS issued policy guidance clarifying inadmissibility under section 212(a)(9)(B) of the Act. *See* 8 *USCIS Policy Manual* O.6, https://www.uscis.gov/policymanual; *see also* Policy Alert PA-2022-15, *INA 212(a)(9)(B) Policy Manual Guidance* (June 24, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates. The policy guidance clarifies that the statutory 3- or 10-year bar to readmission under section 212(a)(9)(B) of the Act begins to run on the day of departure or removal (whichever applies) after accrual of the period of unlawful presence, but a noncitizen subject to the 3- or 10-year bar is not inadmissible to the United States under section 212(a)(9)(B) of the Act unless they depart or are removed and seek admission within the 3- or 10-year period following their departure. *See* 8 *USCIS*

Policy Manual, *supra*, at O.6(B). The policy guidance further clarifies that a noncitizen determined to be inadmissible under section 212(a)(9)(B) of the Act but who again seeks admission more than 3 or 10 years after the relevant departure or removal is no longer inadmissible under section 212(a)(9)(B) of the Act even if they returned to the United States, with or without authorization, during the statutory 3- or 10-year period because the statutory period after that departure or removal has ended. *See id.* The new policy applies to inadmissibility determinations made on or after June 24, 2022, and is dispositive of this appeal. *See* Policy Alert PA-2022-15, at 2.

The Applicant is no longer inadmissible because more than 10 years have elapsed between her April 2007 departure from the United States and the instant request for admission; the fact that she spent a portion of those 10 years in the United States is not relevant. Because the Applicant is no longer inadmissible under section 212(a)(9)(B) of the Act, the only inadmissibility ground the Applicant requested be waived through her Form I-601, she no longer needs an approved waiver application to become a lawful permanent resident. That renders the Form I-601 before us unnecessary, and the appeal of its denial will therefore be dismissed as moot.

ORDER: The appeal is dismissed.