U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25312196

Date: NOV. 18, 2022

Service Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for adjustment of status and seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for unlawful presence. The Applicant accrued more than one year of unlawful presence in the United States, and upon her departure she became inadmissible under section 212(a)(9)(B)(i)(II) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under section 212(a)(9)(B)(v) of the Act when refusal of admission would cause extreme hardship to a qualifying relative.

The record indicates that the Applicant was admitted to the United States as a visitor in August 1997 and departed the country in March 1999, 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 she reentered the United States as a visitor in January 2000, departed in August 2001, and was again admitted as a visitor in June 2008. The Applicant has remained in the country since entering in 2008.

The Director of the San Francisco Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), finding that the Applicant was inadmissible under section 212(a)(9)(B)(i) of the Act and concluding that the record did not establish that refusal of her admission would cause extreme hardship to a qualifying relative. We dismissed the Applicant's appeal on the same basis. Upon further review of the record, we hereby reopen the proceedings and withdraw our prior decision and dismiss the appeal as moot.

Subsequent to our prior decision, 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 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 Applicant is no longer inadmissible pursuant to section 212(a)(9)(B)(i) of the Act because more than 10 years have elapsed between her August 2001 departure from the United States and the instant request for admission. 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 prior decision of the Administrative Appeals Office is withdrawn, and the appeal is dismissed.