U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16156860

Date: SEP. 7, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust 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). The Director of the San Diego, California Field Office denied the waiver, concluding the Applicant had not established his lawful permanent resident parents would experience extreme hardship as a result of his inadmissibility. We dismissed the subsequent appeal, which we incorporate here by reference, affirming the Director's decision that the Applicant is inadmissible for unlawful presence and the record did not establish extreme hardship to his qualifying relatives.

The matter is now before us on a combined motion to reopen and reconsider. A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

In this case, the Applicant states that he initially entered the United States without inspection at an unspecified time prior to April 1, 1997; departed the United States in December 1997; reentered without inspection in January 1998; and has remained in the United States. On motion, the Applicant reasserts that he is not inadmissible under section 212(a)(9)(B)(i)(I) of the Act because it has been at least three years since his December 1997 departure.[1]

During the pendency of the Applicant's motion, 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-

[1] A noncitizen who was unlawfully present in the United States for a period of more than 180 days but less than one year, voluntarily departed the United States prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within three years of the date of such departure or removal, is inadmissible. Section 212(a)(9)(B)(i)(I) of the Act.

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.[2]

The Applicant is no longer inadmissible because more than 3 years have elapsed between his December 1997 departure from the United States and the instant request for admission; the fact that he spent a portion of those 3 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 his Form I-601, he 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 motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] The policy guidance notes that the manner in which the noncitizen returned to the United States during the statutory 3-year or 10-year period may result in the accrual of a new period of unlawful presence or result in inadmissibility under other grounds. *See* 8 *USCIS Policy Manual* at O.6(B).