U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25492042

Date: APR. 05, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for unlawful presence and seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. Id.

The Director of the Yakima, Washington Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), determining the Applicant inadmissible under section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), because he entered the United States without inspection in 1991 and voluntarily departed in March 1998, accruing 334 days of unlawful presence during a single stay between April 1, 1997 and March 1, 1998, and reentered the United States in January 1999.[1] The Director further found the Applicant ineligible for a discretionary waiver under section 212(a)(9)(B)(v) of the Act. The Applicant appealed and we dismissed the appeal, concluding the Applicant was ineligible for a waiver because he had not established by a preponderance of the evidence that a qualifying relative, his spouse, would suffer extreme hardship. The Applicant has now filed a motion to reopen. On motion, the Applicant asserts that we erred by not reviewing evidence of extreme hardship to his LPR parents and includes new evidence. Upon review, we will dismiss the motion as moot.

Pursuant to section 212(a)(9)(B)(i)(I) of the Act, a noncitizen who, on or after April 1, 1997, has been unlawfully present in the United States for 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 of the Act, and who again seeks admission within three years of the date of departure or removal from the United States, is inadmissible. During the pendency of the Applicant's motion to reopen, 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

[1] The Applicant has not departed since his last reentry in 1999.

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. See Policy Alert PA-2022-15, at 2. Similarly, the Board of Immigration Appeals held that noncitizens who are inadmissible for a specified period of time pursuant to section 212(a)(9)(B)(i) of the Act, due to their previous unlawful presence and departure are not required to reside outside the United States during this period in order to subsequently overcome this ground of inadmissibility. Matter of Duarte-Gonzalez, 28 I&N Dec. 688, 691 (BIA 2023).

The Applicant's waiver application sought relief of his inadmissibility solely under section 212(a)(9)(B)(i)(I) of the Act for reentering the United States in 1999 after overstaying more than 180 days but less than a year and triggering the three-year inadmissibility bar. The record establishes that the Applicant is seeking admission three years after his departure in March 1998 and is no longer inadmissible under section 212(a)(9)(B)(i)(I) of the Act. As the underlying basis for the motion is the denial of a waiver no longer required, we need not address the merits of the Applicant's motion to reopen and dismiss the motion to reopen as moot.

ORDER: The motion to reopen is dismissed.