U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15297192

Date: DEC. 29, 2023

Appeal of Fort Meyers, Florida Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant has applied to adjust status to that of a lawful permanent resident 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 record indicates that the Applicant was ordered removed from the United States in 2008. The Applicant was subsequently granted Temporary Protected Status (TPS) and obtained a Form I-512L, *Authorization for Parole of an Alien Into the United States*, pursuant to the TPS provisions in section 244(f)(3) of the Act, 8 U.S.C. § 1254a(f)(3), and corresponding regulations at 8 C.F.R. § 244.15(a). The Applicant then traveled abroad and last entered with that document in 2019. In February 2020 he filed a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), seeking adjustment of status to that of a lawful permanent resident.

The Director of the Fort Meyers, Florida Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that the application was moot because the Applicant did not have a "pending, underlying application under USCIS jurisdiction." The Director noted that the Applicant's Form I-485 had been denied in April 2020 because he remained in removal proceedings and U.S. Citizenship and Immigration Services (USCIS) was without jurisdiction to adjudicate his adjustment of status request.[1] The Applicant's combined motion to reopen and reconsider the I-485 was subsequently dismissed by the Director on the same basis in September 2020. On appeal, the Applicant submits a brief and supporting documentation and asserts that the Director's decision finding that USCIS was without jurisdiction to adjudicate his application for adjustment of status was in error because his departure from the United States effectuated the removal order, thus bringing finality to the removal proceedings against him.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *See Matter of*

[1] USCIS does not have jurisdiction to grant or deny a request for adjustment of status under section 245 of the Act in any case in which the noncitizen is a respondent in removal or deportation proceedings before EOIR unless the noncitizen has been placed in proceedings as an "arriving alien." 8 C.F.R. §§ 245.2(a)(1), 1245.2(a)(1).

Christo's Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

A noncitizen who has been unlawfully present in the United States for 1 year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i) of the Act. This inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent. Section 212(a)(9)(B)(v) of the Act.

The Applicant filed his Form I-601 with the Director shortly after submitting his Form I-485. However, the Applicant has not demonstrated that he is eligible to adjust his status before USCIS. As the Director previously determined when denying the Applicant's Form I-485, the Applicant remains in removal proceedings on account of the removal order that an Immigration Judge issued in 2008. A TPS beneficiary who departs the United States after receiving prior travel authorization pursuant to section 244(f)(3) of the Act and returns with a valid travel document does not execute an outstanding final removal order and therefore remains in removal proceedings upon their return. *See Duarte v. Mayorkas*, 27 F.4th 1044, 1053-54 (5th Cir. 2022); *see also* 7 *USCIS Policy Manual* A.3(D) n. 23, https://www.uscis.gov/policy-manual.

Because the Applicant remains in removal proceedings, USCIS does not have jurisdiction over his adjustment of status request and has denied his underlying Form I-485, and we will therefore dismiss the Applicant's appeal of the Form I-601 denial as a matter of discretion.[2] *See Matter of Martinez-Torres*, 10 I&N Dec. 776, 776-77 (Reg'l Comm'r 1964); *see also I.N.S. v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

ORDER: The appeal is dismissed.

[2] The holding of *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012)—that a noncitizen who leaves the United States temporarily with advance parole does not make a departure from the United States within the meaning of INA 212(a)(9)(B)(i)(II)—also applies to TPS beneficiaries who depart the United States after receiving prior travel authorization pursuant to section 244(f)(3) of the Act. *See 7 USCIS Policy Manual* B.2(A)(5) n. 65, https://www.uscis.gov/policy-manual. Thus, the record does not establish that the Applicant is inadmissible pursuant to section 212(a)(9)(B)(i) of the Act or that he requires a waiver under section 212(a)(9)(B)(v).