U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28736907

Date: JUN. 16, 2023

Service Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant 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 to adjust status to that of a lawful permanent resident. 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. The Director of the Denver, Colorado Field Office denied the waiver application, and we dismissed the Applicant's subsequent appeal, concluding that the Applicant did not establish her U.S. citizen spouse would experience extreme hardship if she were refused admission to the United States.

Upon review, we withdraw our prior decision, reopen the matter *sua sponte* pursuant to 8 C.F.R. § 103.5(a)(5), and dismiss the appeal as moot.[1]

The record indicates that the Applicant entered the United States in September 2000 with a B2 nonimmigrant visa and departed in December 2001. She returned to the United States in December 2001, and she has not departed since this entry. However, since the Applicant returned to the United States before the period of inadmissibility had ended, she was inadmissible under section 212(a)(9)(B)(i) of the Act, and required a waiver under section 212(a)(9)(B)(v) of the Act.

At the time the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), was reopened by the Denver, Colorado Field Office in October 2022, USCIS had 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)

[1] Because the decision to dismiss the appeal as moot is favorable to the Applicant, we are combining the motion to reopen and the favorable decision in one action, pursuant to 8 C.F.R. § 103.5(a)(5)(i).

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. Additionally, the Board of Immigration Appeals held noncitizens subject to a period of inadmissibility for unlawful presence need not reside outside the U.S. during that period. *Matter of Duarte-Gonzalez*, 28 I&N Dec. 688 (BIA 2023).

The Applicant is no longer inadmissible because more than 10 years have elapsed between her December 2001 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 waiver application, she no longer needs an approved waiver application to become a lawful permanent resident.[2] That renders the waiver application before us unnecessary, and the appeal of its denial is therefore dismissed as moot.

ORDER: The appeal is dismissed.

[2] This determination is retroactive to the date of approval of the Applicant's Form I-485 on February 12, 2023.