U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25767414

Date: MAR. 20, 2023

Motion on Administrative Appeals Office Decision

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

The Applicant applied to adjust status to that of a lawful permanent resident as an approved Violence Against Women Act (VAWA) self-petitioner in November 2016. In January 2018, she also filed an Application for Waiver of Grounds of Inadmissibility, Form I-601, seeking a waiver of inadmissibility for unlawful physical presence in the United States under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). See also, Section 212(a)(9)(B)(i)(I), (iii)(IV) of the Act.

The Director of the Harlingen, Texas, Field Office denied the Applicant's Form I-601 waiver application. We dismissed her appeal, as well as her two subsequent combined motions to reconsider and reopen the proceeding. We concluded in our motion decisions that the Applicant was inadmissible under Section 212(a)(9)(B)(i)(I) of the Act, because she was unlawfully present in the United States for a period of more than 180 days but less than 1 year, departed the United States, then again sought admission within three years of the date of her last departure. We also determined that she did not establish the statutory exception to this ground of inadmissibility for VAWA self-petitioners under Section 212(a)(9)(B)(iii)(IV) of the Act, because she did not establish a substantial connection between her unlawful physical presence in the United States and the battery or cruelty she experienced from her U.S. citizen spouse. Finally, we found that she did not demonstrate eligibility for a waiver under Section 212(a)(9)(B)(v) of the Act, because she failed to illustrate that the denial of the Form I-601 waiver application would result in extreme hardship to her sole qualifying relative – her U.S. citizen spouse. The matter is before us on a third motion to reopen and reconsider.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary 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 cannot grant a motion that does not meet applicable requirements. See 8 C.F.R. § 103.5(a)(4).

We may, for proper cause shown, reopen the proceeding or reconsider the prior decision. 8 C.F.R. § 103.5(a)(1)(i).

The record indicates that the Applicant entered the United States on August 17, 2014, with authorization to stay for 30 days, but she remained beyond her period of authorized stay. She did not depart the United States until the end of March 2015. She therefore accrued more than 180 days but less than 1 year of unlawful physical presence in the United States. After departing the United States for Mexico, where she claimed to have remained for a few days, she was admitted to the United States in April 2015. Thus, the Applicant accrued a 3-year bar to admissibility. The record does not show that she has departed the country since.

The Applicant contends that the October 2022 dismissal of her second Motion to Reconsider was erroneous because it was inconsistent with new guidance clarifying inadmissibility under the statutory 3- or 10-year bar to readmission under section 212(a)(9)(B) of the Act. We agree and we withdraw our October 2022 decision dismissing her second motion to reconsider and reopen proceedings.

During the pendency of the Applicant's second motion reconsider and reopen proceedings, 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, 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. 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 3 years have elapsed between her April 2015 departure from the United States and the instant request for admission; the fact that she spent 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 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.[1]

ORDER: The appeal is dismissed.

[1] Because no waiver of admissibility is needed, we need not consider new evidence of extreme hardship that the Applicant submitted on appeal.