U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21865066

Date: JUL. 26, 2022

Appeal of San Diego, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant accrued more than one year of unlawful presence in the United States and consequently became subject to the 10-year bar to readmission described at section 212(a)(9)(B)(i)-(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)-(ii). She now seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act so that she may adjust to lawful permanent resident status. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver when refusal of admission would cause extreme hardship to a qualifying relative. *Id.*

The record indicates, and the Applicant does not dispute, that she entered the United States pursuant to nonimmigrant B1/B2 visitor visa in March 1994 with authorization to remain for six months. She remained in the United States until her departure in July 2001, thereby accruing more than one year of unlawful presence and becoming subject to the 10-year bar at section 212(a)(9)(B)(i)(II) of the Act. The record further indicates that in September 2001, she reentered the United States using the same B1/B2 visa and has remained in the country since that time.

The Director of the San Diego, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), concluding that the Applicant was inadmissible under section 212(a)(9)(B)(i) of the Act and the record did not establish that her qualifying relative would experience extreme hardship if the application were denied. The Applicant subsequently filed an appeal with a brief and supporting evidence on Form I-290B, Notice of Appeal or Motion. The Director reviewed the Form I-290B, treated it as a combined motion to reopen and motion to reconsider, and issued a decision denying the motions on October 18, 2019.

The regulation at 8 C.F.R. § 103.3(a)(2)(iii) states that a reviewing official may treat an appeal as a motion to reopen or reconsider if favorable action will be taken. However, if the reviewing official will not be taking favorable action or decides favorable action is not warranted, that official shall promptly forward the appeal and the related record of proceeding to the Administrative Appeals Office (AAO). 8 C.F.R. § 103.2(a)(2)(iv). The Director did not have the authority to issue an unfavorable decision on the Petitioner's appeal and was required send the appeal to the AAO for adjudication. Accordingly, the Director's decision dated October 18, 2019, is withdrawn. On March 22, 2022, we

notified the Applicant that we have reopened her appeal on Service motion.[1] We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal as moot.

During the pendency of the Applicant's appeal, 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/policy-manual; *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.

The Applicant is no longer inadmissible because more than 10 years have elapsed between her July 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 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.

ORDER: The appeal is dismissed.

[1] We also provided the Petitioner with the opportunity to submit an additional brief and/or evidence in support of her appeal. As of this date, we have not received any supplemental evidence.