



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 22707392

Date: SEPT. 14, 2022

Appeal of Newark 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 between August 2001 and October 2002, subsequently departed from the country for a period of time, and then sought entry within 10 years of her departure. When the Applicant sought admission in February 2003, she 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 Newark Field Office Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application) concluding the Applicant did not demonstrate that refusal of her admission to the country would cause “extreme hardship” to her U.S. citizen spouse. *See* section 212(a)(9)(B)(v). The matter is now before us on appeal. 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). *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) begins to run on the day of departure or removal (whichever applies) after accrual of the period of unlawful presence, but a foreign national subject to the 3- or 10-year bar is not inadmissible to the United States under section 212(a)(9)(B) 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 foreign national determined to be inadmissible under section 212(a)(9)(B) 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) even if they returned to the United States during the statutory 3- or 10-year period because the statutory period after that departure

or removal has ended.¹ *See id.* The new policy applies to inadmissibility determinations made on or after June 24, 2022, and it 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 October 2002 departure from the United States and this 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)—the only inadmissibility ground the Applicant requested be waived through her waiver application—she no longer requires an approved waiver application to become a lawful permanent resident. That renders the waiver application before us unnecessary, and the appeal of its denial will therefore be dismissed as moot.

ORDER: The appeal is dismissed.

¹ We note the new policy guidance provides that the foreign national's return to the United States either with or without authorization during the statutory 3- or 10-year period is not relevant to their inadmissibility under section 212(a)(9)(B). This appears to contemplate a foreign national who sought admission into the United States but was refused entry by a U.S. Customs and Border Protection officer and they subsequently entered the country without inspection, admission, or parole. Despite the fact that they eventually entered without authorization, this foreign national would continue to be inadmissible for the applicable 3- or 10-year period under section 212(a)(9)(B) because they sought admission after accruing the requisite amount of unlawful presence and leaving the United States.