U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27152461

Date: APR. 28, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico currently residing in Mexico, has applied for an immigrant visa, which requires him to show that he is admissible to the United States or eligible for a waiver of inadmissibility. He was found inadmissible as a noncitizen who has been unlawfully present in the United States for one year or more and again seeks admission within ten years of their departure or removal from the United States under 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). He seeks a discretionary waiver of this inadmissibility under section 212(a)(9)(B)(v) of the Act.

The Director of the Nebraska Service Center (Director) denied the waiver application as a matter of discretion, concluding that no purpose would be served in adjudicating it because the Applicant also remains inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for which no waiver was currently available to him. We summarily dismissed the Applicant's appeal. He now files the instant motion to reopen before us. Upon review, we will dismiss the motion.

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought. The Applicant bears the burden to establish his eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

The record indicates that the Applicant previously entered the United States without inspection multiple times, and he remained in this country since his last entry without inspection in 2003 until he left the United States in December 2021. Accordingly, the Director determined that, in addition to being inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence, the Applicant is also inadmissible under section 212(a)(9)(C)(i)(I) of the Act for having been unlawfully present in the United States for an aggregate of more than one year and reentering the country without being admitted. Permission to reapply for admission is an exception to this inadmissibility that U.S. Citizenship and Immigration Services (USCIS) may grant in the exercise of discretion for those who seek admission after residing abroad for ten years following their last departure. Section 212(a)(9)(C)(ii) of the Act. However, the Director determined that the Applicant was ineligible to seek permission to reapply for admission into the United States as he has not remained outside this country for the requisite ten-year period since his last departure in December 2021. Because he

remains inadmissible under section 212(a)(9)(C)(i)(I) of the Act and statutorily ineligible for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act, the Director ultimately denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, as a matter of discretion, as no purpose would be served in reaching the request to waive the other remaining inadmissibility ground for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act. We summarily dismissed the appeal because the Applicant did not identify specifically any legal or factual error in the Director's decision on his Form I-290B, Notice of Appeal or Motion, and did not submit his appeal brief and/or additional evidence to us within 30 days of filing the appeal as he indicated on his Form I-290B.

In support of this motion to reopen, the Applicant submits a brief and additional documents he previously intended to submit on appeal, including his appeal brief. He admits on motion that he mistakenly sent the appeal brief and supporting documents to the wrong location and he does not dispute that these documents were therefore not properly filed with us as required when we dismissed his appeal. *See* 8 C.F.R. § 103.3(a)(2)(i) (stating that the appealing party must submit an appeal on Form I-290B and also must submit the complete appeal including any supporting brief and documents as indicated in the Form I-290B instructions within 30 days of filing the appeal). Further, the instructions for Form I-290B clearly state that any appeal brief and/or evidence submitted *after* filing a Form I-290B "*must be sent directly*" to us. On motion, the Applicant concedes that there was no error in our prior decision summarily dismissing the appeal, and his evidence on motion does not establish new facts that overcome the basis for the summary dismissal. Therefore, his motion does not meet the requirements for reopening at 8 C.F.R. § 103.5(a)(2).[1]

Additionally, reopening is not warranted because the new evidence on motion also does not establish the Applicant's underlying eligibility for the requested waiver. As stated, the Director denied this section 212(a)(9)(B)(v) waiver application as a matter of discretion, after determining that the Applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act and statutorily ineligible for permission to reapply for admission to overcome that ground of inadmissibility. On motion, he does not challenge, and our review of the record discloses no error in, these determinations by the Director. Consequently, the Applicant's new evidence on motion does overcome the Director's discretionary denial of the Form I-601 request to waive his inadmissibility for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act.

ORDER: The motion to reopen is dismissed.

[1] The Applicant also requested a fee refund, which we decline. *See* 8 C.F.R. §§ 103.2(a)(1) and 103.2(a)(7)(ii).