



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

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

In Re: 25312019

Date: FEB. 14, 2023

Service Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant sought a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § (a)(9)(B)(v), for unlawful presence. The Director of the Phoenix, Arizona Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds, finding that the Applicant was inadmissible for accruing unlawful presence in the United States of more than one year but concluding that she was statutorily ineligible for relief because she did not have a qualifying relative for purposes of a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act.

On appeal, the Applicant claimed that she was not inadmissible under section 212(a)(9)(B)(i) of the Act because 10 years had passed since her last departure from the United States and there was no statutory requirement that the 10-year bar be spent outside of the United States. We dismissed the Applicant's appeal, concluding that she was inadmissible for unlawful presence under section 212(a)(9)(B)(i) of the Act and was not statutorily eligible for a waiver of inadmissibility. We are now reopening this matter *sua sponte* pursuant to 8 C.F.R. § 103.5(a)(5), withdrawing our prior decision, and remanding the matter to the Director for entry of a new decision.

After the appeal was dismissed, U.S. Citizenship and Immigration Services (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* (Jun. 24, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates>. The policy guidance clarifies that the statutory 3- and 10-year periods under section 212(a)(9)(B) of the Act begin to run on the day of departure or removal (whichever applies) after accrual of the period of unlawful presence, but a noncitizen who has accrued unlawful presence of more than 180 days during a single stay in the United States is not inadmissible under section 212(a)(9)(B) of the Act unless they depart or are removed (if applicable) and again seek admission within the 3- or 10-year statutory period following their departure or removal. *See* 8 *USCIS Policy Manual*, *supra*, at O.6(B). The policy guidance further clarifies that return to the United States, with or without authorization, during the statutory 3- or 10-year period does not interrupt the running of the statutory 3- and 10-year period.

We hereby reopen the proceedings, withdraw our prior decision, and remand the matter to the Director to determine inadmissibility under the above-referenced policy guidance.

**ORDER:** Our prior decision is withdrawn. The matter is remanded to the Director of the Phoenix, Arizona Field Office for the entry of a new decision consistent with the foregoing analysis.