



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

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

In Re: 29546972

Date: DEC. 11, 2023

Appeal of Boise, Idaho Field Office Decision

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

The Applicant, a native and citizen of Mexico, has applied to adjust status to that of a lawful permanent resident (LPR) and seeks a waiver of inadmissibility for unlawful presence under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Boise, Idaho Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application) concluding the Applicant was inadmissible pursuant to section 212(a)(9)(C)(i) of the Act, entering the United States without being admitted after having been ordered removed. There is no exception or waiver for this ground of inadmissibility until 10 years after the Applicant's departure from the United States, and because 10 years had not passed at the time of filing, the Director concluded that although the Applicant established her spouse would suffer extreme hardship, she would remain inadmissible even if the waiver application were approved. As such, the Director denied the waiver application as a matter of discretion, because approving it would serve no purpose. The Applicant appealed that decision to this office.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

A noncitizen who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). USCIS may grant a discretionary waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act if refusal of admission to the noncitizen would result in extreme hardship to their U.S. citizen or LPR spouse or parent.

Section 212(a)(9)(C) of the Act provides that any noncitizen who has been unlawfully present in the United States for an aggregate period of more than one year, or has been ordered removed, and who enters or attempts to reenter the United States without being admitted, is inadmissible. Noncitizens

found inadmissible under section 212(a)(9)(C) of the Act may seek permission to reapply for admission under section 212(a)(9)(C)(ii), which provides that inadmissibility shall not apply to a noncitizen seeking admission more than 10 years after the date of last departure from the United States if, prior to the reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the noncitizen's reapplying for admission.

The Applicant first entered the United States in 1995. She was issued an Order to Show Cause and ordered deported in absentia in 1995. On January 17, 2001, she departed the United States and reentered the next day without inspection and has remained in the United States since January 18, 2001. She may not seek permission to reapply for admission until she has remained outside of the United States for at least 10 years from the date of that last departure. *See* section 212(a)(9)(C)(ii) of the Act. Because the Applicant has not been outside of the United States for 10 years, even if the waiver application were approved, she will still be inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Act. Therefore, adjudicating the waiver application would serve no purpose, and it will remain denied as a matter of discretion.

ORDER: The appeal is dismissed.