U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28048419

Date: NOV. 20, 2023

Appeal of San Diego, California Field Office Decision

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

The Applicant, a citizen of Mexico, has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility for unlawful physical presence in the United States under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). See also, Section 212(a)(9)(B)(i)(II) of the Act.

The Director of the San Diego, California Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the record did not establish that refusal of admission would result in extreme hardship to the Applicant's only qualifying relative, his lawful permanent resident mother. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 as moot.

U.S. Department of Homeland Security (DHS) records indicate the Applicant entered the United States three times between 1999 and 2002, all using a nonimmigrant B-2 visitor visa. His authorized stay expired on July 25, 2002, yet he did not depart until November 17, 2006. Accordingly, the Applicant accrued more than one year of unlawful presence in the United States. The Applicant's last entry to the United States was on December 28, 2006, which was within 10 years from his November 17, 2006 departure. As a result, the Director deemed him inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States fo\r one year or more and seeking admission within 10 years of his last departure. The record does not show that he has departed the country since his last entry in 2006.

After the Director issued their decision and 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/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 confirms 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 a noncitizen's departure or removal (whichever applies) after accrual of a period of unlawful presence, but inadmissibility under this provision does not arise unless such noncitizen seeks 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. Additionally, the Board of Immigration Appeals held that noncitizens subject to a period of inadmissibility for unlawful presence need not reside outside the U.S. during that period. Matter of Duarte-Gonzalez, 28 I&N Dec. 688 (BIA 2023).

The Applicant is no longer inadmissible because more than 10 years have elapsed between his November 2006 departure from the United States and the instant request for admission; the fact that he spent 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 his Form I-601, he 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.[1]

ORDER: The appeal is dismissed.

[1] Because no waiver of admissibility is needed, we need not consider new evidence of extreme hardship that the Applicant submitted on appeal.