U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28791084

Date: NOV. 28, 2023

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of El Salvador currently residing in El Salvador, has applied for an immigrant visa, which requires him to show, inter alia, that he is admissible to the United States or eligible for a waiver of inadmissibility. A U.S. Department of State ("DOS") consular officer found the Applicant inadmissible 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), 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. The Applicant seeks a discretionary waiver under section 212(a)(9)(B)(v) of the Act for this inadmissibility ground for unlawful presence. The DOS consular officer also found him inadmissible under section 212(a)(6)(B) of the Act, as a noncitizen who, without reasonable cause, failed to attend removal proceedings and seeks admission within five years after subsequent removal or departure. There is no waiver available for this ground of inadmissibility.

The Director of the Nebraska Service Center denied the Form I-601, Application to Waive Inadmissibility Ground (waiver application), as a matter of discretion, concluding that approval of the waiver application would serve no purpose because even if granted, the Applicant would remain inadmissible under section 212(a)(6)(B) of the Act for which there is no waiver available. The matter is before us on appeal, which we review de novo. 8 C.F.R. § 103.3; *see also Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). On appeal, he submits a brief and reasserts his eligibility for a waiver of inadmissibility. The Applicant bears the burden of proof to establish his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

The record shows that the Applicant previously entered the United States without inspection in 2006 and he was placed in removal proceedings. He subsequently failed to attend a scheduled hearing and an immigration judge ordered him removed in absentia. The Applicant remained in this country since his last entry without inspection in 2006 until he was removed from the United States to El Salvador in [redacted] 2019. Therefore, as stated, 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)(6)(B) of the Act for failing to attend removal proceedings and seeking admission to this country within five years of his removal. Although a discretionary waiver of unlawful presence inadmissibility is available under section 212(a)(9)(B)(i)(II), there is no comparable waiver for inadmissibility arising under section 212(a)(6)(B) of the Act.

On appeal, he submits a brief and concedes that he is inadmissible under section 212(a)(6)(B) of the Act and will remain so for a period of five years after his departure until [redacted] 2024. He further concedes that there is no waiver for this inadmissibility ground. Accordingly, the Director did not err in denying the application for a waiver of section 212(a)(9)(B)(i)(II) inadmissibility for unlawful presence as a matter of discretion. Contrary to the Applicant's appellate assertions, the Director was not required to reach the merits of the Applicant's waiver application for unlawful presence as no purpose would be served in adjudicating it due to his remaining section 212(a)(6)(B) inadmissibility for failing to attend removal proceedings. *See, e.g., INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that courts and agencies are not required to address issues that are unnecessary to the results they reach); *see also Matter of J-F-D-, 10 I&N Dec. 694* (Reg'l Comm'r 1963) (finding that where an applicant will remain inadmissible even if a waiver is granted, the remaining inadmissibility may itself support a denial of the waiver application as a matter of discretion).

We acknowledge the Applicant's claim on appeal that his waiver application should be approved because such a waiver generally does not expire and can be used in the future; and in [redacted] 2024, he will no longer be inadmissible for failing to attend removal proceedings. However, the Applicant does not provide persuasive arguments or cite any pertinent legal authority to support his assertion that the Director erred in denying the section 212(a)(9)(B)(v) waiver request as a matter of discretion, where he would remain inadmissible under section 212(a)(6)(B) of the Act, even if the waiver were granted. Consequently, the appeal arguments do not overcome the Director's discretionary denial of the Form I-601 application to waive the Applicant's inadmissibility for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act.

ORDER: The appeal is dismissed.