U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26983081

Date: OCT. 3, 2023

Appeal of Boston, Massachusetts Field Office Decision

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

The Applicant accrued more than one year of unlawful presence in the United States and consequently became subject to the 10-year bar to readmission described at 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). She now seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act so that she may adjust to lawful permanent resident status.[1] U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver when refusal of admission would cause extreme hardship to a qualifying relative. *Id.*

The Director of the Boston, Massachusetts Field Office denied the application, concluding that the record did not establish that the Applicant's spouse would experience extreme hardship if she were denied admission to the United States. 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.

The Applicant, a citizen and national of Brazil, entered the United States in June 2001 with a tourist visa and remained beyond her authorized period of stay. In October 2009, she departed the United States triggering inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The Applicant presented herself at a port of entry and requested Asylum in August 2016. The Applicant was issued an I-860: Notice of Order of Expedited Removal and released pending a credible fear hearing. In [redacted] 2021, the Applicant married J-S-, a U.S. citizen, and she seeks adjustment of status based on that relationship.

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 clarifies that the statutory 3- or 10-year bar to readmission under section 212(a)(9)(B) of the Act begins

[1] The Director incorrectly asserted that the Applicant sought a waiver of inadmissibility under section 212(i) of the act, 8 U.S.C. § 1182(i). This error is immaterial to the final decision reached on appeal because the Applicant no longer requires a waiver of inadmissibility.

to run on the day of departure or removal (whichever applies) after accrual of the period of unlawful presence, but a noncitizen subject to the 3- or 10-year bar is not inadmissible to the United States under section 212(a)(9)(B) of the Act unless they depart or are removed and seek 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.

The Applicant is no longer inadmissible because more than 10 years have elapsed between her October 2009 departure from the United States and the instant request for admission; the fact that she spent a portion of 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 her Form I-601, she 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.

ORDER: The appeal is dismissed as moot.