



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

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

In Re: 21608494

Date: JULY 20, 2022

Appeal of Phoenix, Arizona Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

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). He now seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act so that he may adjust to lawful permanent resident status. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver when refusal of admission would cause extreme hardship to a qualifying relative. Section 212(a)(9)(B)(v) of the Act.

The record indicates, and the Applicant does not dispute, that he entered the United States in 1995 using a Border Crossing Card and remained until his departure on February 14, 2001. The record further indicates that the Applicant subsequently reentered the United States on February 24, 2001, with his Border Crossing Card, remained until departing in December of 2001, reentered again in January 2002 with his Border Crossing Card, and has remained in the country since that time. The Applicant has therefore accrued more than one year of unlawful presence and is subject to the 10-year bar at section 212(a)(9)(B)(i)(II) of the Act.¹

The Director of the Phoenix, Arizona Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), concluding that the Applicant was inadmissible under section 212(a)(9)(B)(i) of the Act and the record did not establish that his qualifying relative would experience extreme hardship if the application were denied. The matter is now before us on appeal. We review the questions in this matter *de novo*. See *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.

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/20220624-INA212a9B.pdf>. The policy guidance clarifies that the statutory 3- or 10-

¹ The applicant's unlawful presence accrued from April 1, 1997, the effective date of enactment of the unlawful presence provisions under the Act, until his departure on February 14, 2001. He again accrued unlawful presence from February 24, 2001, until December of 2001.

year bar to readmission under section 212(a)(9)(B) of the Act begins 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 found 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, *supra*, at 2.

The Applicant is no longer inadmissible because more than 10 years have elapsed between his last departure from the United States and the instant request for admission; the fact that he 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 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.

ORDER: The appeal is dismissed.