



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

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

In Re: 22120051

Date: SEP. 01, 2022

Appeal of San Francisco, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Director of the San Francisco, California Field Office found that the Applicant was inadmissible under section 212(a)(9)(B)(ii) of the Immigration and Nationality Act (the Act) for having accrued unlawful presence of more than one year and was therefore subject to a 10-year bar to admissibility. The Applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act so she can 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.* In denying the waiver application and a subsequent motion to reopen and reconsider the Director concluded that the Applicant did not establish extreme hardship to a qualifying relative, her U.S. lawful permanent resident father. The matter is 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.

In finding the Applicant inadmissible for accruing unlawful presence, the Director determined that the record showed she entered the United States multiple times with a visitor visa, including an entry on January 15, 1997, after which she did not depart until July 15, 1999, thus accruing more than one year of unlawful presence.² The Applicant reentered August 15, 1999, with her visitor visa. The Applicant does not dispute the inadmissibility finding and the record indicates that she has not departed the United States since her August 1999 entry.

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 clarifies 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 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*

¹ On Form I-601 the Applicant indicated that she may also be inadmissible under section 212(a)(6)(C)(I) of the Act for fraud or willful misrepresentation, but the Director determined that she was not inadmissible under this section of the Act.

² The record indicates the Applicant carried a Mexican passport containing a multiple-entry B1/B2 visitor visa.

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. *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 July 1999 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, 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.