U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31934401

Date: MAR. 14, 2024

Motion on Administrative Appeals Office Decision

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

The Applicant, a native and citizen of Mexico, has applied to adjust status to that of a lawful permanent resident (LPR) and seeks a waiver of inadmissibility for unlawful presence under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v).[1] U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Boise, Idaho Field Office denied the application, concluding that there was no waiver available for the Applicant's inadmissibility. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). 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). Upon review, we will dismiss the motion.

The Applicant was apprehended and placed in removal proceedings in [redacted] 1995. The Applicant was ordered removed in absentia after failing to appear for the hearing. The Applicant states that her notice of hearing was sent to an incorrect address, and she was unaware of the hearing. In December 2000, the Applicant was provided with her warrant for deportation at government expense. The Applicant departed the United States on January 17, 2001 and claims to have re-entered the following day. The Applicant claimed on prior applications for adjustment of status that she last entered the United States without inspection in 2001. As a result, the Director determined that the Applicant is inadmissible under section 212(a)(9)(C)(i) of the Act and had not spent ten years outside of the United States. On

[1] The Applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act because more than ten years have elapsed since her last departure in January 2001. *See* 8 *USCIS Policy Manual* O.6, https://www.uscis.gov/policymanual

appeal, we agreed with the Director that approval of the waiver application would serve no purpose because the Applicant is otherwise inadmissible and no waiver is available.

On motion, the Applicant submits a new personal statement regarding her most recent entry into the United States and evidence of her departure from the United States in January 2001. The Applicant asserts that these new facts establish eligibility, as she did not enter the United States without inspection as she had previously indicated but was waived through the border crossing and granted "admission".

In situations where the manner of entry is not in dispute, a foreign national who was waved through at the border could be considered inspected and admitted for the purpose of section 245(a) of the Act, 8 U.S.C. § 1255(a). *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). *See also, Matter of Areguillan*, 17 I&N Dec. 308 (BIA 1980) (holding that foreign nationals bear the burden of establishing that they presented themselves for inspection). Here, the Director found that the Applicant had not established that she was inspected, admitted, or paroled. The Applicant did not submit additional evidence on appeal to establish her prior lawful admission and that her manner of entry was not in dispute. The only evidence of her January 2001 entry to the United States is from the Applicant's own statement on motion. As noted above, it is the Applicant's burden to establish that she presented herself for inspection. *Id.* The Applicant's statement alone is insufficient to meet this burden. Since the Applicant departed the United States while subject to a final removal order after more than one year of unlawful presence and then re-entered the United States without inspection, she is inadmissible under section 212(a)(9)(C)(i) of the Act.

An individual who is inadmissible under section 212(a)(9)(C)(i) of the Act must apply for consent to reapply for admission to overcome this ground of inadmissibility once ten years have elapsed since the individual's last departure and the individual has been outside the United States for more than ten years. Section 212(a)(9)(C)(ii) of the Act; *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). To avoid inadmissibility under section 212(a)(9)(C)(i) of the Act, the Applicant's last departure must have occurred at least ten years ago, the Applicant must have remained outside the United States, and U.S. Citizenship and Immigration Services must consent to the Applicant's reapplying for admission. In the present matter, the Applicant is in the United States, and has not remained outside of the United States for ten years. Therefore, she is not eligible to apply for the exception to inadmissibility under section 212(a)(9)(C)(ii) of the Act.

Although the Applicant has submitted additional evidence in support of the motion to reopen, the Applicant has not established eligibility. On motion to reconsider, the Applicant has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.