



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

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

In Re: 17643817

Date: FEB. 28, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa and seeks a waiver of inadmissibility under section 212(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(A)(iii), for a Class A physical or mental disorder. In addition, he seeks a waiver of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude (CIMT). The Director of the Nebraska Service Center denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that a waiver under section 212(g) was not available for the Applicant's inadmissibility based upon his physical or mental disorder. In addition, the Director concluded that the Applicant committed violent or dangerous crimes as contemplated in 8 C.F.R. § 212.7(d) and as such he must be held to a heightened discretionary standard. He then found that the record did not establish that the Applicant's qualifying relative, his U.S. citizen spouse, would experience exceptional and extremely unusual hardship if he were denied the waiver. The matter is now before us on appeal. On appeal, the Applicant contends that the Director did not consider some of the evidence in the record, including evidence of his rehabilitation. The Administrative Appeals Office reviews 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.

**I. LAW**

Any noncitizen convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A).

Individuals found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Where the activities resulting in inadmissibility occurred more than 15 years before the date of the application, a waiver is available if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the noncitizen has been rehabilitated. Section 212(h)(1)(A) of the Act. A waiver is also available if denial of admission

would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered “extreme,” the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the “common result of deportation” and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). In these proceedings, it is the applicant’s burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

With respect to the discretionary nature of a waiver, where a noncitizen has been convicted to a violent or dangerous crime, the regulations governing the exercise of discretion are set forth in 8 C.F.R. § 212.7(d). A favorable exercise of discretion under this regulation is precluded except in extraordinary circumstances, including where the noncitizen has established “exceptional and extremely unusual” hardship if the waiver is denied, or where overriding national security or foreign policy considerations exist.

In addition, section 212(a)(1)(A)(iii) of the Act provides that any noncitizen who is determined to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the noncitizen or others, is inadmissible. Section 212(g) of the Act, 8 U.S.C. § 1182(g), provides for a discretionary waiver of this inadmissibility in accordance with any terms, conditions, and controls prescribed after consultation with the Secretary of Health and Human Services.

## II. ANALYSIS

The record shows that the Applicant was convicted of two crimes which he committed in Poland in [ ] 2012: “attempt to commit robbery” under articles 13(1) and 280(1) of the Polish Penal Code, and “infringing bodily inviolability” under article 217a of the Polish Penal Code. He was given an aggregate suspended sentence of two years of imprisonment, with a four year probationary period. The United States Consulate in Warsaw found him inadmissible for having been convicted of a CIMT. In his decision on the Applicant’s waiver application, the Director found that both of these crimes constitute CIMTs, and the Applicant does not dispute that finding on appeal. Because the maximum term of imprisonment for a conviction under article 280(1) at the time the Applicant committed this crime was 12 years, he is not eligible for the petty offense exception under section 212(a)(2)(a)(ii)(II) and remains inadmissible for having committed a CIMT. In addition, as these crimes were committed less than 15 years prior to the date of this decision, the Applicant is not eligible for a waiver under section 212(h)(1)(A) of the Act for rehabilitation.

In addition, the United States Consulate in Warsaw found that the Applicant was also inadmissible due to a Class A physical or mental disorder with harmful behavior or a history of such behavior likely to recur. Specifically, a panel physician determined after a psychological review that the Applicant suffers from an alcohol-use disorder, and that a recurrence of his previous violent behavior could not be ruled out.

On appeal, the Applicant asserts that consideration of the proof of his rehabilitation (presumably related to his alcohol use) was omitted from the Director's decision. We note that he submitted a document titled "medical certificate" with his application which shows a discharge from a hospital for treatment of his alcohol addiction in 2015, as well as another issued in 2019 which confirms the diagnosis of alcohol addiction but indicates that the symptoms of addiction are not confirmed. In addition, he submitted a letter from the [redacted] which states that he is an active participant in the group's weekly meetings. However, there is no indication in the record that the finding of the panel physician has been reversed. Only medical examiners, such as panel physicians, civil surgeons, or other physicians designated by the Director of Health and Human Services, may make determinations of Class A medical conditions. See 42 C.F.R. § 34. Neither the Act nor regulations provide USCIS with jurisdiction to overturn a finding made by an authorized medical examiner. If the Applicant is found by a panel physician to be in sustained, full remission, he may be found to be admissible as he would no longer have a Class A mental disorder, but that determination must be made by a panel physician. See 9 FAM 40.11 N11.1

On appeal, the Applicant asserts that the Director did not consider all of the evidence submitted regarding the exceptional and extremely unusual hardship to his spouse if his waiver application were denied. However, because the Applicant would remain inadmissible under section 212(a)(1)(A)(iii) of the Act, no purpose would be served in evaluating his eligibility for a waiver under section 212(h)(1)(B) of the Act. The Applicant's appeal is therefore dismissed as a matter of discretion, as its approval would not result in his admissibility to the United States.

### III. CONCLUSION

The Applicant is inadmissible to the United States, and has not established eligibility for a waiver under section 212(g) of the Act.

**ORDER:** The appeal is dismissed.