U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21462506

Date: AUG. 03, 2022

Appeal of the Hialeah, Florida Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant applied to adjust status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act but was found inadmissible to the United States under Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for committed a crime involving moral turpitude (CIMT) and under section 212(a)(2)(B) of the Act for being convicted of two or more offenses for which the aggregate sentences to confinement were five years or more. The Applicant seeks a waiver of this inadmissibility under section 212(h) of the Act. The Director denied the waiver application. We review the questions raised 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

A 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)(i)(I) of the Act. Under section 212(a)(2)(B) of the Act, any alien convicted of two or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct, and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were five years or more is inadmissible.

Section 212(h)(1)(A) of the Act provides for a discretionary waiver where the activities occurred more than 15 years before the date of the application 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. If a noncitizen demonstrates eligibility under Section 212(h)(1)(A) of the Act, U.S. Citizenship and Immigration Services (USCIS) must then decide whether to exercise its discretion favorably and consent to the noncitizen's admission to the United States. Section 212(h)(2) of the Act.

With respect to the discretionary nature of a waiver, the burden is on the noncitizen to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the noncitizen's

undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300. However, a favorable exercise of discretion is not warranted for noncitizens who have been convicted of a violent or dangerous crime, except in extraordinary circumstances, such as cases involving national security or foreign policy considerations, or when a noncitizen "clearly demonstrates that the denial . . . would result in exceptional and extremely unusual hardship." 8 C.F.R. § 212.7(d). In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board of Immigration Appeals determined that exceptional and extremely unusual hardship "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." In assessing exceptional and extremely unusual hardship, the hardship factors used in determining extreme hardship should be considered and all hardship factors should be considered in the aggregate. *Id.* at 63-64.

Even if the noncitizen were able to show the existence of extraordinary circumstances pursuant to 8 C.F.R. § 212.7(d), that alone would not be enough to warrant a favorable exercise of discretion. *See Matter of Jean*, 23 I&N Dec. 373, 383 (A.G. 2002) (providing that depending on the gravity of the underlying criminal offense, a showing of exceptional and extremely unusual hardship might still be insufficient to grant the immigration benefit as a matter of discretion).

II. ANALYSIS

The record reflects that the Applicant entered the United States in 1995 with public interest parole. He was arrested and convicted for events occurring in 1997 and 2001, and he was placed in removal proceedings in 2017 and charged as inadmissible under section 212(a)(2)(A)(i)(I) of the Act for a conviction of a CIMT. He filed a Form I-485, Application to Adjust Status, in 2019. The Director found the Applicant inadmissible because he was convicted of CIMTs and convicted of two or more offenses for which the combined sentence of confinement was five years or more. The Applicant then filed the Form I-601 seeking a waiver of inadmissibility under section 212(h)(1)(A) of the Act. The Director denied the waiver application as a matter of discretion.

In denying the waiver application the Director found that the Applicant's 1997 arrest resulted in a conviction for aggravated assault in violation of Pennsylvania Statutes, Title 18 section 2702(a)(4). The statute provided, in part, that a person is guilty of aggravated assault if he attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon. The Director found that the Applicant was also convicted in 2002 for stalking in violation of Pennsylvania Statutes, Title 18 section 2709(b)(1), which provided, in part, that a person commits the crime of stalking when he engages in a course of conduct including following the person under circumstances which demonstrate an intent to place the person in reasonable fear of bodily injury.

The Director identified the Applicant's positive factors as his lengthy residence in the United States and his continued filing of income taxes. The Director listed the evidence submitted by the Applicant, including affidavits from himself, his spouse, friends, employers, and pastors; financial records; and civil documents. The Director observed, however, that the letters of support were not notarized, were not accompanied by a statement swearing to their veracity, did not include copies of identification of the writers, and did not attest to how his character now differed to demonstrate rehabilitation. The Director found that the statements were general and lacked specific details leading to their

characterizations of the Applicant and thus accorded them limited evidentiary weight in establishing his rehabilitation.

The Director identified the negative factors as the Applicant's convictions for aggravated assault, simple assault, and recklessly endangering another person[1] where he attempted to stab another person with a large knife at a place of business. The Director noted the Applicant's conviction for attempting to lure a child into a motor vehicle and stalking[2] where he repeatedly attempted to get a 15-year-old female into his car without consent of a parent and followed her without authority. The Director found that these negative aspects outweighed the positive elements, and the Applicant did not submit sufficient evidence to demonstrate rehabilitation.

The Director also concluded that the violent nature of aggravated assault and the gravity of Applicant's actions constituted a violent or dangerous crime, as referenced in 8 C.F.R. § 212.7(d), and that he did not submit sufficient evidence to demonstrate extraordinary circumstances and did not show exceptional and extremely unusual hardship.

On appeal, the Applicant argues, through counsel, that he provided details of his arrests and the turning point in his life, that he has had no interaction with law enforcement since 2001, and that he is a hardworking productive member of society with a life of stability for many years. He contends that the Director placed an unreasonable burden on the letters of support as they provide contact information and offer insight into his character despite not being notarized, they indicate how and for how long the writers have known him, and they detail his character. The Applicant points out that some letters are written on company or church letterhead and were unfairly disqualified as evidence. The Applicant contends that the Director listed all the evidence but did not properly address statements regarding his positive factors. The Applicant maintains that he does not negate his past but takes responsibility and asks forgiveness as more than 20 years have passed since his arrests, and he is now 55 years old.

After reviewing the record in its entirety, we agree with the Director that the positive factors in the Applicant's case are outweighed by the negative factors. In his statement the Applicant indicated that he regrets the harm he caused and asked for forgiveness for past violent behavior in his youth which led him to commit a physical attack on another person. He claimed that he was a distressed youth without adult supervision after arriving in the United States alone and lacked education and understanding of the language and culture. The Applicant explained that he was on the wrong path and contended that he has done his best to make amends, gave himself to Jesus Christ in 2000, and has since changed his life as he stopped drinking, completed anger management classes, obtained a commercial driver's license, and works steadily.

In her statement the Applicant's spouse recalled that the couple met in 2004 and married in 2018. She described the Applicant as a good husband, always responsible, hardworking, and supportive of the community. Letters of support from pastors and church members described the Applicant as responsible, peaceful, and a faithful member of the church who helps others. Letters from employers state the Applicant is responsible and reliable and has integrity.

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[1] Pennsylvania statute title 18 sections 2702(a)(4), 2710(a) and 2705 respectively.
[2] Pennsylvania statute title 18 sections 2910 and 2709(b)(1) respectively.

The Applicant's statement appears to only reference his aggravated assault conviction where he concedes past behavior and asks forgiveness, but his statement provides only vague observations, and he offers little explanation of the events other than his general circumstances at the time. He contends he was a troubled youth, but the record indicates he was about 30 years old at the time. The Applicant asserts that he turned his life around in 2000, but his conviction for stalking stemmed from events in 2001. The Applicant's statement does not offer details surrounding his stalking conviction nor reference this arrest and conviction. Beyond claiming he stopped drinking, completed anger management classes, and works steadily, the Applicant has not presented detail to support his assertion of rehabilitation and has not submitted sufficient evidence of the existence of other favorable factors, such as evidence of the existence of property or business ties or detailed information concerning community activities that would reflect positively on his character or demonstrate value or service in the community.

The statement from the Applicant's spouse, although suggesting they have been together since 2004, offers little insight into the Applicant's character or changes over time that would attest to his rehabilitation. Although we acknowledge the Applicant's reasoning in challenging the Director's conclusion that the letters of support are of little evidentiary value, review of those letters shows they provide only general observations of the Applicant's character as being responsible, but they do not illustrate specific instances to support their observations and do not indicate awareness of his past criminal history that would help demonstrate his rehabilitation.

Considering the record in its totality, the Applicant has not established that the favorable factors in his case outweigh the negative ones and that he merits a favorable exercise of discretion. As noted, the Director determined the nature of the underlying conduct resulting in the Applicant's conviction for aggravated assault subjects him to the heightened discretionary standard under 8 C.F.R. § 212.7(d) for a conviction for a violent or dangerous crime. On appeal, the Applicant has not addressed the Director's determination, and as we have concluded that the Applicant does not merit a favorable exercise of discretion based on the balancing of adverse and favorable factors in his case, we need not address this issue.

The burden of proof rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met this burden, and the Form I-601 will remain denied.

ORDER: The appeal is dismissed.