U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22340292

Date: AUG. 11, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Macedonia, seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), for having been convicted of a crime involving moral turpitude. The Director of the Nebraska Service Center denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant was subject to a heightened discretionary standard because he was convicted of a violent or dangerous crime and he did not merit a favorable exercise of discretion. The matter is now before us on appeal. On appeal, the Applicant submits evidence and a brief asserting his eligibility. 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

A foreign national 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) of the Act. A discretionary waiver is 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. Finally, if a foreign national demonstrates his or her eligibility under section 212(h)(1)(B) of the Act, U.S. Citizenship and Immigration Services must then decide whether to exercise its discretion favorably and consent to the foreign national'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 Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996). We must balance the adverse factors evidencing the Applicant'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 (citations omitted). However, a favorable exercise of discretion is not warranted for foreign nationals 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 an applicant "clearly demonstrates that the denial . . . would result in exceptional and extremely unusual

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

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The record reflects that the Applicant was admitted to the United States as a lawful permanent resident in 1998, he was convicted in [redacted] 2003 and in [redacted] 2010 of assault with a deadly weapon under California Penal Code § 245(a)(1), and he departed the United States pursuant to a voluntary departure order in 2011. The Director determined that the Applicant is inadmissible under section 212(a)(2)(A)(i) of the Act for being convicted of a crime involving moral turpitude and he does not dispute that finding on appeal. The Director also concluded that the Applicant was subject to a heightened discretionary standard because he was convicted of a violent or dangerous crime (assault with a deadly weapon), he did not establish exceptional and extremely unusual hardship, and he did not merit a favorable exercise of discretion. The issue on appeal is whether the Applicant merits a favorable exercise of discretion.[1] We find that although the Applicant has established exceptional and extremely unusual hardship, he has not established that he merits a favorable exercise of discretion. Our decision is based on a review of the record, which includes, but is not limited to, statements from the Applicant and his mother, criminal records, medical records for the Applicant's mother and children, letters of support, and photographs.

As noted above, when a foreign national has been convicted of a violent or dangerous crime, the regulation at 8 C.F.R. § 212.7(d) generally precludes a favorable exercise of discretion except in extraordinary circumstances, which include situations in which the foreign national has clearly established "exceptional and extremely unusual hardship" if the benefit is denied, or situations in which overriding national security or foreign policy considerations exist. Even if the foreign national were able to show the existence of extraordinary circumstances pursuant to 8 C.F.R. § 212.7(d), that alone may not be enough to warrant a favorable exercise of discretion. *See Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002) (providing that depending on the gravity of the foreign national's 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). In this case, the Applicant does not assert that his case involves national security or foreign policy considerations. Therefore, we must determine if he has clearly demonstrated that denying him admission would result in exceptional and extremely unusual hardship.

[1] The Director found that the Applicant's U.S. citizen mother would experience extreme hardship if his waiver application was denied and thus meets the extreme hardship requirement under section 212(h)(1)(B) of the Act. We will not disturb this finding on appeal.

In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board of Immigration Appeals (the Board) 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." The Board stated that 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.

The Applicant's claim of exceptional and extremely unusual hardship is based on the aggregate hardship that his U.S. citizen mother and two U.S. citizen children, ages 13 and 9, would continue to experience without him. The Applicant states that his mother has several medical issues, including side effects from lung cancer surgery, osteoporosis, emphysema, chronic obstructive pulmonary disease, and dyspnea. He asserts that she needs his economic, physical, and emotional support as she is only allowed to work in a limited manner. The Applicant's mother states she is experiencing physical and emotional hardship without the Applicant, and her work at a hospice center is being disrupted due to stress, lack of energy, and inability to concentrate. She also references inability to sleep, anxiety attacks, and concern for her grandchildren's well-being as they miss the Applicant. She describes financial obligations towards the Applicant and his wife and children. The Applicant's mother's medical records reflect that she had lung cancer surgery and can only work a limited work schedule due to her recovery and treatment, she has other medical issues including several described above, and she is taking many medications, including for anxiety and depression. In addition. The Applicant's mother's psychologist described the depressive and anxiety symptoms she is experiencing due to separation from the Applicant.

Next, the Applicant details how his younger son underwent a craniotomy after falling off a balcony, he suffers from seizures caused by post traumatic epilepsy, and he will be on medication for the rest of his life. Furthermore, he claims his younger son suffers from persistent disruptive behavior. The Applicant's younger son's medical records include evidence of his attention deficit hyperactivity disorder (ADHD), post traumatic epilepsy, seizures, staring spells, and disruptive behavior.

The Applicant mentions that his older son has behavioral issues. His evaluation report reflects that he has a high level of angry outbursts, oppositional behaviors, physical aggression, and has withdrawn from his family. He has also been prescribed Adderall to assist with his ADHD and his evaluation reflects that not seeing the Applicant has contributed to his behavior. The Applicant states that his absence during his sons' formative years has adversely affected their healthy development. The record includes articles on the negative effects of growing up without a father.

The record reflects that the Applicant's mother and two children are experiencing significant hardship without the Applicant's presence and support. Specifically, the Applicant has established that they have serious medical issues and are being affected physically and emotionally by his absence. When considering these issues in the aggregate, the Applicant has established exceptional and extremely unusual hardship.

We will now address whether the Applicant merits a favorable exercise of discretion. The Applicant's favorable factors include his U.S. citizen spouse, two U.S. citizen children, U.S. citizen mother, approved Form I-130, Petition for Alien Relative, showing of exceptional and extremely unusual

hardship, compliance with his voluntary departure order, and lack of a criminal record while in Macedonia.

The unfavorable factors include the Applicant's convictions for assault with a deadly weapon in 2003 and 2010, conviction for possession of a dangerous weapon in 2002, conviction for petty theft in 2002, conviction for driving under the influence of alcohol in 2003, conviction for battery in 2003, and conviction for driving while license suspended or revoked for driving under the influence. We note that driving under the influence of alcohol is both a serious crime that poses a risk to others and a significant adverse factor relevant to our consideration of whether the Applicant warrants a favorable exercise of our discretion. *See Matter of Siniauskas*, 27 I&N Dec. 207, 208-09 (BIA 2018) (finding DUI a significant adverse consideration in determining a respondent's danger to the community in bond proceedings); *Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (BIA 2019) (discussing the "reckless and dangerous nature of the crime of DUI").

Furthermore, the Applicant was arrested in 2001 for burglary and in 2008 for robbery. We may consider an arrest record in an exercise of discretion, depending on the evidence in the record. *See Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (citing to *Matter of Grijalva*, 19 I&N Dec. 713 (BIA 1988) and *Matter of Thomas*, 21 I&N Dec. 20 (BIA 1995)) (finding that we may look to police records and arrests in making a determination as to whether discretion should be exercised); *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995) (declining to give substantial weight to an arrest absent a conviction or other corroborating evidence, but not prohibiting consideration of arrest reports). In this case, the Applicant's arrest report for robbery reflects that he and his accomplice jumped another individual resulting in serious injuries to the victim including a concussion, nasal fracture, and lacerations to the face.

While the Applicant has submitted character letters from his mother-in-law and church leader, these letters do not establish he is a person of good character. Neither letter addresses his lengthy criminal history, rather his mother-in-law claims that he has been through a terrible ordeal that is "completely unfounded," and his church leader states that he has not known the Applicant to "be in any kind of trouble…especially not the law." Lastly, while the Applicant now states that he is a changed person and understands the severity of his actions, he does not discuss his past behavior and remorse in a detailed and meaningful manner. Therefore, we give his statement of remorse minimal weight.

Viewing the totality of the circumstances, including the Applicant's lengthy, serious, and violent criminal history, he has not established that the favorable factors in his case outweigh the unfavorable ones. Therefore, the Applicant has not established, by a preponderance of the evidence, that he merits a favorable exercise of discretion.

ORDER: The appeal is dismissed.