U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21361890

Date: AUG. 26, 2022

Appeal of Oakland Park, Florida Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Brazil, 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 Oakland Park, Florida Field Office 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. Where the activities resulting in inadmissibility occurred more than 15 years before the date of the application, a discretionary 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 discretionary 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. Finally, if a foreign national demonstrates his or her eligibility under section 212(h)(1)(A) or (B) of the Act, U.S. Citizenship and Immigration Services (USCIS) 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 with B1/B2 nonimmigrant visa in 1995, and he was convicted in [redacted] 1999 of aggravated assault with a deadly weapon in violation of section 784.021(1)(a) of the Florida Statutes (Fl. Stat. § 784.021(1)(a)), a third-degree felony. 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 the Applicant does not dispute that finding on appeal.

The record reflects that the underlying activity for which the Applicant was found inadmissible occurred more than 15 years before the date of his application for adjustment of status. He thus qualifies for consideration of a waiver of his inadmissibility under section 212(h)(1)(A) of the Act. We also note that the Applicant has three U.S. citizen sons, ages 11, 16, and 25. He therefore qualifies for consideration of a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

The Director did not first address whether the Applicant qualifies for a waiver under either section 212(h)(1)(A) or section 212(h)(1)(B) of the Act. Rather, the Director concluded that the Applicant is subject to a heightened discretionary standard because he was convicted of a violent or dangerous crime, he did not establish exceptional and extremely unusual hardship, and he did not merit a favorable exercise of discretion. We note that even if an applicant is able to establish that he or she meets section 212(h)(1)(A) and/or section 212(h)(1)(B) of the Act waiver requirements, if the record reflects that the applicant was convicted of a violent or dangerous crime, USCIS may not favorably exercise discretion 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).

The Director correctly determined that the Applicant was convicted of a violent or dangerous crime. Thus, even if the Applicant could establish that he qualifies for a waiver under either section 212(h)(1)(A) or section 212(h)(1)(B) of the Act (which we have not determined, and which issues we

reserve), we may not favorably exercise discretion in his case except in extraordinary circumstances.[1] We agree with the Director's finding that the Applicant has not established exceptional and extremely unusual hardship and therefore he does not merit a favorable exercise of discretion on this basis alone. Our decision is based on a review of the record, which includes, but is not limited to, statements from the Applicant and his children, a psychological evaluation of the Applicant and his youngest child, criminal records, financial records, letters of support, photographs, and information on Brazil.

A. Violent or Dangerous Crime

The Applicant asserts that the Director erred in finding his [redacted] 1999 conviction for aggravated assault to be a violent or dangerous crime. The Applicant states that the categorical approach must be used in determining whether a crime is violent or dangerous, and aggravated assault is not categorically a violent or dangerous crime. While the Applicant cites to case law, he has not provided cases which support his claim that the categorical approach is used for determining whether a crime is violent or dangerous under 8 C.F.R. § 212.7(d). Furthermore, we do not agree with the Applicant's claim that the facts of his case should be analogous to those in *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002) in order to be a violent or dangerous crime. In determining whether a crime is a violent or dangerous crime for purposes of discretion, we are not limited to a categorical inquiry but may consider both the statutory elements and the nature of the actual offense. *See Torres-Valdivias v. Lynch*, 786 F. 3d 1147, 1152 (9th Cir. 2015); *Waldron v. Holder*, 688 F.3d 354, 359 (8th Cir. 2012). The words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not defined in 8 C.F.R. § 212.7(d), and we are aware of no precedent decision or other authority containing a definition of these terms as used in the regulation. We therefore interpret the phrase "violent or dangerous crimes" in accordance with the plain or common meaning of its terms. *Black's Law Dictionary* (11th ed. 2019), for example, defines violent as 1) "[o]f, relating to, or characterized by strong physical force," 2) "[r]esulting from extreme or intense force," 3) "[v]ehemently or passionately threatening." It defines dangerous as ""perilous, hazardous, [or] unsafe," or "likely to cause serious bodily harm."

Here, the Applicant was convicted of aggravated assault with deadly weapon in violation of Fl. Stat. § 784.021(1)(a). The statutory language in Fl. Stat. § 784.021(1)(a) provided that the Applicant's conviction was for an assault with a deadly weapon without intent to kill and Fl. Stat. § 784.011(1) provided that an "assault" is "an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent." In addition, the information document states that the Applicant threatened to do violence to his ex-spouse, he came at her with a knife, and she had a well-founded fear that violence was imminent. In light of these factors, we find that the offense for which the Applicant was convicted of was passionately threatening and perilous, hazardous, and unsafe. Under these circumstances the Applicant's conviction was for a crime that was violent or dangerous, as those terms are ordinarily understood, and the Applicant has not established otherwise.

[1] Our reservation of the section 212(h) of the Act waiver requirements is not a stipulation that the Applicant has established those requirements and should not be construed as such. Rather, there is no constructive purpose to addressing those requirements here because they would not change the outcome of the appeal.

B. Exceptional and Extremely Unusual Hardship

The Applicant claims that the Director failed to consider all the hardship factors presented, and he has established exceptional and extremely unusual hardship. Again, 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. Here, the Applicant does not assert that his case involves national security or foreign policy considerations. Therefore, the Applicant must establish exceptional and extremely unusual hardship.

A foreign national may satisfy the heightened requirement by establishing exceptional and extremely unusual hardship to himself or his qualifying relatives. *Matter of C-A-S-D-*, 27 I&N Dec. 692, 696 (BIA 2019). The age, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives may be hardship factors that could be relevant for establishing exceptional and extremely unusual hardship. *See Matter of Monreal-Aguinaga,* 23 I&N Dec. 56, 63-64 (BIA 2001) (discussing factors in the context of cancelation of removal under section 240A(b) of the Act, 8 U.S.C. 1229b(b) (1999)). However, exceptional and extremely unusual hardship "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *Matter of Monreal-Againaga*, *supra*, at 62. In addition, "a lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship." *Id.* at 63-64. "As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship." *Id.*

The Applicant details the hardship his children would experience. The Applicant states that he emotionally and financially provides for his three U.S. citizen children and two grandchildren, with is two youngest children receiving monthly child support from him. The record includes evidence that the Applicant provides child support. The Applicant asserts that his two youngest children's mother is unable to solely provide for them, he would not be able to obtain a job and provide for them from Brazil, and they have been affected by attending school online during the pandemic. The psychologist states that the Applicant's youngest child has been bullied in school, he presents with numerous symptoms of childhood depression, and he would be afflicted with traumatic parental loss without the Applicant, his best friend and role model, resulting in long-term emotional problems. The Applicant's 25-year-old son mentions that the Applicant helped him get his own place as he was financially struggling, and he does not know how he would survive without him. In addition, the Applicant states that his children would experience hardship if they relocated to Brazil due to unsafe, poor economic conditions and lack of medical insurance and educational opportunity. The psychologist states that the Applicant's youngest son cannot speak Portuguese and identifies with the lifestyle and culture in the United States. The record includes a travel advisory for Brazil and other information referencing safety and Covid health-related issues there.

Next, the Applicant details the hardship that he would experience. The psychologist states that the Applicant presented with symptoms of anxiety, depression, and trauma. The Applicant states that he has resided in the United States for over 25 years, and he is a contributing member of society. The

Applicant mentions that he would have to live with his adult daughter in Brazil, and he would experience hardship due to high unemployment, crime, and Covid issues there.

Although the record does not include sufficient documentary evidence to establish the level of financial hardship the Applicant's children would experience without him, it does reflect that his children would experience emotional difficulty without him, especially his youngest child. Furthermore, the Applicant's children would experience hardship if they relocated to Brazil due to general country conditions, their lack of ties there, and their ties to the United States, and the Applicant would experience hardship upon relocation to Brazil due to general country conditions there. However, we note the types of hardships discussed are the common results of removal and are not substantially beyond the ordinary hardship upon removal of a family member. Based on a totality of the evidence, the Applicant has not shown that the cumulative hardship to himself and his children meets the heightened exceptional and extremely unusual hardship standard set forth in 8 C.F.R. § 212.7(d). As the Applicant does not merit a favorable exercise of discretion due to not establishing exceptional and extremely unusual hardship, we need not address his favorable and unfavorable factors.

ORDER: The appeal is dismissed.