U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23672220

Date: DEC. 19, 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(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h).

The Director of the Nebraska Service Center denied the application, concluding that the Applicant's conviction for robbery was a crime involving moral turpitude, as well as a violent or dangerous crime, subjecting him to a heightened discretionary standard. The Director determined that, although the Applicant had established his rehabilitation under section 212(h)(1)(A) of the Act, he did not meet the heightened standard and denied the application as a matter of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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). We review 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 withdraw the Director's decision and remand the matter for the entry of a new decision.

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides that any 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.

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). Section 212(h)(1)(A) of the Act provides for a 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 foreign national has been rehabilitated. If, however, the foreign national's conviction is for a violent or dangerous crime, USCIS may not grant a waiver unless the foreign national also shows "extraordinary circumstances" with the final stipulation that, even if such a showing is made, the waiver can still be denied because of the gravity of the offense. 8 C.F.R. § 212.7(d).

The record reflects that a court in Vietnam convicted the Applicant of robbery in 1998 for having attempted to steal a necklace worn by another individual while both were riding motorcycles. The court sentenced the Applicant to 18 months in prison. The Director determined that his conviction deemed him inadmissible under section 212(a)(2)(A)(i)(I) of the Act for a crime involving moral turpitude. The Director also determined that his conviction for robbery was a dangerous or violent crime. The Director concluded that the Applicant had established his rehabilitation under section 212(h)(1)(A) of the Act, but that the record did not show extraordinary circumstances. Thus, the Director denied the waiver application as a matter of discretion under section 212(h)(2) of the Act and 8 C.F.R. § 212.7(d).

On appeal, the Applicant does not contest his inadmissibility or the violent and dangerous nature of the crime. The Applicant requests that the waiver be granted based on his good moral character and "exceptional and extremely unusual hardship" to his U.S. citizen brother and other lawful permanent resident siblings.

A favorable exercise of discretion is not warranted for applicants who have been convicted of a violent or dangerous crime, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which denial of the application 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 (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 asserts that his U.S. citizen brother will experience financial and physical hardships if he remains inadmissible to the United States. The record includes statements from the Applicant's brother and supporting evidence. The Director concluded that the Applicant's brother was not a qualifying relative for the purposes of this application and declined to consider the evidence regarding the exceptional and extremely unusual hardship. However, a favorable exercise of discretion under 8 C.F.R. § 212.7(d) does not require that the exceptional and extremely unusual hardship be suffered by a qualifying relative. Rather, the hardship may be to the Applicant or any other individual.

Because the Director erred in requiring that the Applicant establish exceptional and extremely unusual hardship only to a qualifying relative, the Director's decision is withdrawn. In his statements, the Applicant's brother describes his claimed financial hardship and medical conditions. Upon remand, the Director should analyze and discuss the evidence to determine whether it meets the standard of exceptional and extremely unusual hardship. The Director should also consider whether the Applicant merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d).

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.