U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15941084

Date: FEB. 4, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant applied abroad for an immigrant visa and was found inadmissible to the United States on two grounds: conviction of a "crime involving moral turpitude" (CIMT); and willful concealment of his arrest or conviction on the visa application. The Applicant seeks to waive the inadmissibility grounds under Immigration and Nationality Act (the Act) sections 212(h) and (i), 8 U.S.C. §§ 1182(h) and (i).

The Director of the Nebraska Service Center confirmed the inadmissibility grounds and denied the application to waive the CIMT.[1] The Director found that the Applicant's conviction constituted a "violent or dangerous" crime and concluded that he did not meet the heightened discretionary standard required to waive the CIMT.

On appeal, the Applicant asserts that his crime did not involve moral turpitude and was neither violent nor dangerous. He also submits additional evidence that denial of his admission would cause hardship to his naturalized, U.S. citizen parents.

The Applicant bears the burden of establishing admissibility clearly and beyond doubt. *See Matter of Bett*, 26 I&N Dec. 437, 440 (BIA 2014). Otherwise, he must demonstrate eligibility for the requested waivers by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we affirm the Director's findings regarding the Applicant's inadmissibility and conviction for a violent or dangerous crime. We further find that the Applicant's appeal contains evidence of additional, potential hardship that was not previously before the Director and could affect her discretionary decision. We will therefore withdraw the Director's denial and remand the matter for further consideration consistent with the following analysis.

I. INADMISSIBILITY

Noncitizens convicted of CIMTs, or attempts or conspiracies to commit CIMTs, generally cannot gain admission to the United States. Section 212(a)(2)(A)(i)(I) of the Act. Noncitizens are also generally inadmissible if, by fraud or willful misrepresentation of material facts, they seek or sought to obtain,

[1] The Director did not decide the application to waive the other inadmissibility ground.

or have obtained, visas, other documents, U.S. admission, or other immigration benefits. Section 212(a)(6)(C)(i) of the Act.

The Applicant is a 44-year-old native and citizen of Albania. In [redacted] 2003, he was working in Albania as a taxi driver when he transported three male passengers to a bar. Before entering the establishment, one of the men removed an automatic weapon from a sack he was carrying. The men entered the bar, and the gunman shot and wounded two people. The Applicant stated that he called police and told them that, until he heard the shots, he did not know that his passenger intended to shoot people. The police, however, charged the Applicant with "aiding a crime's author." *See* Article 302 of the Albanian Criminal Code. Facing up to five years in jail, the Applicant stated that he agreed to plead guilty to the charge in exchange for punishment of only a fine. When seeking an immigrant visa in 2017 as the married son of a U.S. citizen parent, the Applicant's application form did not disclose his 2003 arrest or conviction as required by the form's instructions.

A. Misrepresentation of a Material Fact

The Applicant's sister - a naturalized U.S. citizen - stated that their mother helped the Applicant complete his immigrant visa application and misread a portion of the application's instructions. The Applicant's sister said their mother's unintentional error resulted in the application's omission of the Applicant's 2003 arrest and conviction and has caused their mother extreme guilt.

The Applicant, however, does not challenge the finding that he willfully concealed his arrest and conviction on the visa application. The record therefore supports the Applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

B. CIMT

The Applicant argues that his conviction for aiding the gunman does not constitute a CIMT. Because the shooter was purportedly convicted of only unlawful possession of a weapon, the Applicant asserts that his conviction does not involve moral turpitude.[2] *See Matter of Short*, 20 I&N Dec. 136 (BIA 1989) (holding that a conviction for aiding in the commission of crime is a CIMT if the underlying crime involves moral turpitude).

The record, however, does not support the Applicant's argument. The Applicant asserts that the gunman was convicted for only unlawful possession of a weapon, and court records indicate that authorities charged him with solely this offense. But the record does not indicate the crime or crimes the gunman was ultimately convicted of. In the decision on the Applicant's case, the court found that the shooter shot and wounded two people. As the record does not contain evidence of the crime or crimes the gunman was ultimately convicted of, the Applicant has not shown that Albanian authorities did not bring additional charges against the shooter. *See, e.g.,* Article 89 of the Albanian Criminal Code (criminalizing the intentional infliction of a non-serious injury on another). The Applicant therefore has not clearly demonstrated his admissibility. *See Matter of Bett*, 26 I&N Dec. at 440.

[2] The Applicant contends that the gunman was charged with "unlawful possession of military ammunition." The court records provided by the Applicant, however, describe the charge against the shooter as "unlawful possession of a weapon."

Moreover, a U.S. consular officer in Albania determined that the Applicant's criminal conviction was a CIMT that rendered him inadmissible. "No visa or other documentation shall be issued to an alien if it appears to the consular officer . . . that such alien is ineligible to receive a visa or such other documentation." Section 221(g)(1) of the Act, 8 U.S.C. § 1201(g)(1). Thus, we lack authority to overrule the officer's decision. For this additional reason, the Applicant has not demonstrated his admissibility to the United States.

II. VIOLENT OR DANGEROUS CRIME

USCIS will not generally exercise favorable discretion to waive a criminal ground of inadmissibility that involves a "violent or dangerous" crime. 8 C.F.R. § 212.7(d). Exceptions include "extraordinary circumstances, such as those involving national security or foreign policy considerations," or cases in which applicants demonstrate that denials of their admissions would cause "exceptional and extremely unusual hardship." *Id.* The standard of exceptional and extremely unusual hardship requires hardship "substantially beyond the ordinary hardship" expected upon denial of a noncitizen's admission to the United States and is limited to "truly exceptional" situations. *Matter of Monreal-Aguinga*, 23 I&N Dec. 56, 62 (BIA 2001) (defining the term "exceptional and extremely unusual hardship" in the context of an application for cancellation of removal under section 240A(b) of the Act, 8 U.S.C. § 1229(b)).

The regulation at 8 C.F.R. § 212.7(d) does not define the phrase "violent or dangerous crime" or the individual terms "violent" or "dangerous." We therefore apply the terms' ordinary meanings. *See Matter of Al Wazzan*, 25 I&N Dec. 359, 365 (AAO 2010) (citation omitted). The term "violent" means "of, relating to, or characterized by strong physical force." Black's Law Dictionary (11th ed. 2019). The term "dangerous" means "perilous, hazardous, [or] unsafe," or "likely to cause serious bodily harm." *Id.* In determining whether a crime is violent or dangerous, we may consider both statutory elements of the crime 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).

As the Director found, the nature of the Applicant's offense supports his conviction for a violent or dangerous crime. As previously indicated, based on the evidence of record, the Albanian court found the underlying crime in the Applicant's case to involve shooting people with a gun. Shooting a gun is violent because the activity is marked by the discharge of bullets at high speeds, and such bullets are usually harmful or destructive physical forces. The conduct is also dangerous. It not only could have involved possible injury, but it did, in fact, injure two people.

The Applicant argues that the statutes of conviction of him and the shooter do not involve the intentional or threatened use of force or substantial risks that force may be used. The natures of the specific offenses, however, evidence violent or dangerous crimes. As previously indicated, court records show that the crimes of the Applicant and the gunman related to a shooting, conduct that is inherently violent or dangerous. The Applicant claims that authorities convicted the shooter of only unlawful possession of a weapon, but nothing in the record documents this assertion. Also, the court's finding that the gunman shot two people with an automatic weapon demonstrates the violent or dangerous nature of the underlying crime. We therefore affirm the Director's finding that the Applicant's conviction constitutes a violent or dangerous crime.

III. DISCRETION

In addition to demonstrating their rehabilitations or the potential for "extreme hardship" to their U.S. citizen or lawful permanent resident spouses, parents, sons, or daughters, applicants seeking waivers of criminal grounds of inadmissibility must demonstrate that they merit exercises of favorable discretion. Section 212(h)(2) of the Act. In exercising discretion, USCIS must weigh adverse factors regarding applicants' undesirability as lawful permanent residents with the social and humane considerations documented in their waiver applications. *Matter of Mendez-Moralez*, 21 I&N 296, 299-300 (BIA 1996). Positive discretionary facts include demonstration that denial of applicants' admissions would cause extreme hardship to their qualifying relatives. *Id.* at 301.

As previously indicated, we affirm the Director's finding that the Applicant was convicted for a violent or dangerous crime. *See* 8 C.F.R. § 212.7(d). The record also lacks evidence of exceptional circumstances. *Id.* Thus, to warrant a favorable exercise of discretion for the CIMT waiver, the Applicant must demonstrate that denial of his admission would result in exceptional and extremely unusual hardship to himself or others. *Id.*

The Director did not determine whether, under section 212(h)(1) of the Act, the Applicant established his rehabilitation or that denial of his admission would cause extreme hardship to his U.S. citizen parents. Rather, the Director found that, even assuming the Applicant's establishment of one of those requirements, he did not qualify for the requested waiver because he did not demonstrate that he merits a discretionary grant under the heightened standard of exceptional and extremely unusual hardship.

After the appeal's filing in September 2020, however, the Applicant supplemented the record with evidence that his mother was diagnosed with breast cancer in February 2021. This evidence appears to demonstrate additional, potential hardship to the Applicant and his family beyond that initially considered by the Director. An application for admission is a "continuing application" determined based on the facts and law at the time of the filing's final consideration. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992). We will therefore withdraw the Director's discretionary denial and remand the matter for a new discretionary determination under section 212(h)(2) of the Act.

On remand, the Director should consider the Applicant's new evidence and ask him to submit updated evidence of his mother's medical condition. If the Applicant establishes exceptional and extremely unusual hardship under section 212(h)(2) of the Act, the Director must further consider the Applicant's qualifications for the requested waivers under sections 212(h)(1) and, if necessary, 212(i) of the Act.

IV. CONCLUSION

The record supports the inadmissibility grounds against the Applicant and his conviction for a violent or dangerous crime. When exercising discretion on the CIMT waiver application, however, we remand for the Director to consider additional hardship evidence submitted by the Applicant.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further consideration consistent with the foregoing analysis.