U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17588678

Date: FEB. 15, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Mexico, 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), for having been convicted of a crime involving moral turpitude (CIMT).[1]

The Director of the Nebraska Service Center denied the application, concluding that although the Applicant's lawful permanent resident (LPR) mother, a qualifying relative, appeared to have medical conditions amounting to extreme hardship, he did not establish extraordinary circumstances per the higher discretionary standard for a violent or dangerous crime under 8 C.F.R. § 212.7(d). We agreed with the Director and dismissed the Applicant's appeal. The Applicant has filed a motion to reconsider our decision.

On motion, the Applicant contends that we erred in finding him ineligible for a waiver of inadmissibility under section 212(h) of the Act. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reconsider.

I. LAW

A motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Noncitizens found inadmissible under section 212(a)(2)(A)(i)(I) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. Section 212(h)(1)(A) of the Act provides for a waiver where the activities occurred more than 15 years before

[1] A U.S. Department of State consular officer determined that the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. In [redacted] 1995, he was convicted of willfully discharging a firearm in a grossly negligent manner which could result in injury or death in violation of California Penal Code section 246.3, a felony, in [redacted] California. He was sentenced to three years of probation and 90 days in jail.

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 alien has been rehabilitated. Section 212(h)(1)(B) of the Act provides for a waiver if denial of admission would result in extreme hardship to the noncitizen's United States citizen or lawful permanent resident spouse, parent, son, or daughter.

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). However, a favorable exercise of discretion is not warranted for individuals 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" according to 8 C.F.R. § 212.7(d). 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-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001). Even if the applicant 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 noncitizen'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).

II. ANALYSIS

In our November 2020 decision, we agreed with the Director that the Applicant's crime of willful discharge of a firearm with gross negligence in a manner that could result in injury or death was a violent or dangerous crime. We explained that the use of a firearm in a manner that could result in injury or death to a person indicates strong physical force and a likelihood to cause bodily harm. We further noted that based on the evidence in the record, the Applicant had not met his burden of establishing that his willful discharge of a firearm with gross negligence was not violent or dangerous, as those terms are commonly understood. We concluded that he was subject to the heightened discretionary standard set forth in 8 C.F.R. § 212.7(d) and that he must clearly demonstrate extraordinary circumstances that warrant a favorable exercise of discretion.

Because the Applicant did not assert that his case involves national security or foreign policy considerations, we turned to the issue of whether denial of his admission would result in exceptional and extremely unusual hardship. We determined that the Applicant had not sufficiently demonstrated the ongoing impact of his relatives' emotional or medical hardship on their daily lives that clearly demonstrates exceptional and extremely unusual hardship that would be alleviated by his admission. Likewise, we noted that the record did not show extraordinary hardship to the Applicant himself, and concluded that the hardships present in his case did not meet this heightened standard of exceptional and extremely unusual hardship as required by 8 C.F.R. § 212.7(d).

On motion, the Applicant does not contest our determination that he did not meet the heightened standard of exceptional and extremely unusual hardship required by 8 C.F.R. § 212.7(d). Instead, he reiterates that he was not convicted of a "violent or dangerous" offense, and therefore we erred by assessing the evidence under the "exceptional and extremely unusual hardship" discretionary standard. The Applicant contends that his conviction for willfully discharging a firearm in a grossly negligent manner which could result in injury or death "should not be considered a violent and dangerous crime."

He cites to court decisions discussing the term "crime of violence," but those decisions do not address the definition of "violent or dangerous crime" in 8 C.F.R. § 212.7(d). As such, they do not support the Applicant's claim that his conviction for discharge of a firearm with gross negligence does not qualify as a violent or dangerous crime for the purposes of discretion in the instant waiver proceedings.

Furthermore, a determination that a crime is not a "crime of violence" does not preclude a finding that a crime is not violent or dangerous for purposes of discretion. 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" under 8 C.F.R. § 212.7(d) are not further defined in the regulation or case law and are distinct from a determination that a crime is an aggravated felony. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002). Pursuant to our discretionary authority, we understand "violent or dangerous" according to the ordinary meanings of those 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," or 3) "[v]ehemently or passionately threatening." It defines dangerous as "perilous, hazardous, [or] unsafe," or "likely to cause serious bodily harm." *Id.*

The Applicant also cites to *Matter of Jean*, 23 I&N Dec. at 373 and two other cases which he argues identify "only extremely serious crimes as meeting the 'violent or dangerous' definition." He asserts that his conviction "should not be considered a 'violent or dangerous' offense based on the facts of the case." The record, however, contains a formal charging document stating that "the crime of Discharge of Firearm With Gross Negligence, in violation of Penal Code Section 246.3, a Felony, was committed by [the Applicant], who did willfully and unlawfully discharge a firearm in a grossly negligent manner which could result in injury and death to a person." The charging document includes a "Notice" indicating that the Applicant's "offense is a serious felony within the meaning of Penal Code Section 1192.7(c)(8)." The Applicant has not presented specific arguments indicating that his crime was not "dangerous," and the record does not include evidence to show that the offense he committed was otherwise not violent or dangerous as those terms are commonly understood. Accordingly, he has not demonstrated that we erred in concluding that his discharge of a firearm with gross negligence conviction qualifies as a violent or dangerous crime.

The Applicant's arguments on motion do not establish that we erred in determining that he is subject to the heightened discretionary standard set forth in 8 C.F.R. § 212.7(d). He therefore has not met the requirements for a motion to reconsider as he has not shown that we erred in our previous decision based on the record before us on appeal. In addition, the motion to reconsider does not establish that our dismissal of his appeal was based on an incorrect application of law, regulation, or USCIS policy.

The Applicant has been found inadmissible for a crime involving moral turpitude that is also a violent or dangerous crime, and he has not demonstrated extraordinary circumstances that warrant a favorable exercise of discretion. He has not shown that we erred as a matter of law or USCIS policy in dismissing his appeal and therefore we have no basis for reconsideration of our appellate decision. Consequently, he remains ineligible for a waiver of inadmissibility under section 212(h) of the Act, his appeal remains dismissed, and his waiver application remains denied.

ORDER: The motion to reconsider is dismissed.