U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16302990

Date: FEB. 15, 2022

Appeal of Los Angeles, California USCIS Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident (LPR) 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 his conviction involving a crime involving moral turpitude.

The Director of the Los Angeles, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's qualifying relatives would experience extreme hardship if he were denied the waiver.

On appeal, the Applicant asserts that his crime occurred more than 25 years ago, that he has not committed any additional crimes in the last 25 years, and that he is eligible for a waiver of his inadmissibility.[1] The applicant also reiterates that his qualifying relatives would experience extreme hardship if he remains inadmissible to the United States.

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 withdraw the decision of the Director. The matter will be remanded for the entry of a new decision consistent with the foregoing analysis.

I. LAW

A noncitizen 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)(I) of the Act.

Individuals found inadmissible under section 212(a)(2)(A)(i)(I) of the Act may seek a discretionary waiver of inadmissibility under section 212(h) 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

[1] Although the Applicant filed a timely appeal of the denial of his waiver application in 2015, adjudication of the appeal was deferred while the Applicant was in continued removal proceedings.

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 U.S citizen or LPR spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. Finally, if a noncitizen demonstrates eligibility under section 212(h)(1)(A) or (B) of the Act, USCIS must then decide whether to exercise its discretion favorably and consent to the noncitizen's admission to the United States. Section 212(h)(2) of the Act.

II. ANALYSIS

The Applicant has been found inadmissible under section 212(a)(2)(A) of the Act for having been convicted of a crime involving moral turpitude and he does not contest his inadmissibility. In denying the application to adjust to LPR status, the Director found that the Applicant was convicted in 1989 of two counts of rape by force under Cal. Penal Code § 261(2) and was sentenced to three years in prison.[2] Therefore, based on the current record before us, the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and requires a waiver under section 212(h) of the Act.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the "common result of deportation" and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

Here, the Applicant's qualifying relatives include his U.S. citizen spouse, two adult U.S. citizen children, and his U.S. citizen mother and stepfather. The Applicant did not provide specific detail in his waiver application about the extreme hardship that his qualifying relatives may face if he remains in admissible to the United States. On his waiver application he stated, "I was declared inadmissible to the U.S. for the conviction of ... 261.2(2) Penal Code Felony. I have complied with all the requirements of the Superior Court of California, [redacted]' He also submitted a "Certificate of Rehabilitation" issued by the Superior Court of the State of California on [redacted] 2011, stating that he was discharged from custody upon his release on parole in 1991 and that he had no further criminal convictions.

In her decision, the Director stated, "the evidence in the record does not support a finding that your spouse, son or daughter would experience extreme hardship should you be removed from the United States." However, the Director does not address information regarding hardships to qualifying

[2] The Director also noted that the Applicant had been arrested for additional crimes in the United States between 1981 and 1983, including assault with a deadly weapon, carrying a loaded firearm in a public place, possession of a dangerous weapon, battery and malicious mischief/vandalism, and another incident involving rape. However, the only conviction that resulted from these additional arrests was in 1981 for a dangerous weapon violation under section 12020(A) of the Cal. Penal Code. The Applicant was sentenced to 60 days in jail, 12 months of probation, and community service.

relatives that the Applicant provided during a July 2014 interview with an immigration officer at the USCIS Field Office.

A review of the record, including evidence submitted on appeal, indicates that at the time of the Applicant's waiver adjudication he was eligible to apply for a section 212(h)(1)(A) waiver, commonly referred to as the rehabilitation waiver, as the events leading to his inadmissibility occurred in 1988 or more than 15 years ago. The Director did not consider the Applicant's eligibility for a waiver under section 212(h)(1)(A) of the Act. Thus, we are remanding the matter for the Director to review the Applicant's eligibility for a rehabilitation waiver and whether the Applicant merits a waiver as a matter of discretion.

On appeal, the Applicant states that he provides emotional and financial support to his U.S. citizen wife and parents. He provides evidence that he suffers from human immunodeficiency virus infection and requires regular medical treatment and medication that would not be available if he were returned to El Salvador. On remand, if the Director does not find that the Applicant is eligible for a rehabilitation waiver under 212(h)(1)(A), the Director must consider whether the Applicant has established that a discretionary waiver under Section 212(h)(1)(B) of the Act is warranted if denial of admission would result in extreme hardship to his U.S citizen spouse, parents, or children, and if so, whether he merits a waiver as a matter of discretion.

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