U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19597662

Date: FEB. 16, 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 determined that one of the Applicant's convictions for a crime involving moral turpitude constituted a violent or dangerous crime, subjecting him to a heightened discretionary standard. The Director concluded that the Applicant did not meet this heightened standard and denied the application as a matter of discretion.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

I. LAW

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. Section 212(h)(1)(B) of the Act provides for a waiver if denial of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse, parent, son, or daughter, or in the case of an applicant for a fiancé(e) visa, extreme hardship to the petitioning U.S. citizen fiancé(e). 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).

II. ANALYSIS

The record reflects that courts in Albania convicted the Applicant for three offenses: 2005 threat and vigilantism and 2011 identity fraud. In addition, a court in the United Kingdom convicted the Applicant in 2013 for possession/control identity documents with intent. The courts sentenced the Applicant to two months imprisonment for the first two offenses, one year imprisonment for the third offense, and 8 months imprisonment, forfeiture of license, and a fine for the fourth offense. The Director found that his convictions deemed him inadmissible under section 212(a)(2)(A)(i)(I) of the Act for crimes involving moral turpitude. In regards to a waiver of this inadmissibility, the Director concluded that the Applicant demonstrated extreme hardship to his lawful permanent resident spouse and child under section 212(h)(1)(B) of the Act. However, the Director determined that his threat and vigilantism convictions are dangerous or violent crimes, and 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. However, the Applicant claims that he is now eligible for the rehabilitation waiver under section 212(h)(1)(A) of the Act, his threat and vigilantism convictions are not dangerous or violent crimes, and he has shown extraordinary circumstances for the discretionary waiver.

A. Rehabilitation Waiver

The Applicant claims that since he committed the threat and vigilantism crimes in 2005, he is now eligible for the rehabilitation waiver because 15 years have elapsed. 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. However, as indicated above, the Applicant committed other crimes involving moral turpitude that occurred within the past 15 years, rendering him ineligible for the rehabilitation waiver. Regardless, like the extreme hardship waiver under section 212(h)(1)(B) of the Act, the rehabilitation waiver under section 212(h)(1)(A) of the Act is subject to the same discretionary waiver provisions under section 212(h)(2) of the Act and 8 C.F.R. § 212.7(d). Even if he met the rehabilitation waiver requirements under section 212(h)(1)(A) of the Act, he would not warrant a favorable exercise of discretion because of his conviction of a violent or dangerous crime and the absence of extraordinary circumstances, discussed further below.

B. Violent or Dangerous Crime

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).

The Applicant contends that since the court sentenced him to only two months imprisonment for his threat and vigilantism crimes and then suspended the sentence for probation, he was not engaged in grievous criminal conduct. Specifically, the Applicant points to article 57 of the Albanian Criminal Code (ACC), which states that suspension of the execution of an imprisonment may be based on the low dangerousness of the person, his age, health and mental condition, lifestyle, family needs, circumstances of the criminal offense, and conduct after the criminal offense. Furthermore, the Applicant referenced a statement from the victim's father, who claimed that the Applicant "hit [the victim] gently, not at risk, to push him out of the way."

However, the record does not support the Applicant's assertions and the father's claims. The record contains a decision from the Republic of Albania, District Court of [redacted] detailing the circumstances of the crime. According to the judgment, the Applicant refused to return the victim's vehicle because of a debt owed by the victim to the Applicant. After the victim confronted the Applicant about returning the vehicle, the Applicant kicked and punched the victim, threatened the victim with a knife, and told the victim that he would kill him. The Applicant then instructed the victim that he would keep the car in exchange for the debt owed to him. In addition, the Applicant deflated the tires and removed the battery, so the victim would not be able to remove the car. The Applicant pled guilty to article 84 of the ACC for threat, and he also pled guilty to article 277 of the ACC for vigilantism. Article 84 of the ACC defines "threat" as "[s]erious threat to murder or serious injury to someone," while article 277 off the ACC defines "vigilantism" as "[t]he exercise of a right by a person who retains the right or he thinks he retains the right which is not recognized by the other person without addressing to the competent State body."

The words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation or case law. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002) (explaining that defining and applying the "violent or dangerous crime" discretionary standard is distinct from determination that a crime is an aggravated felony). Pursuant to our discretionary authority, we understand "violent or dangerous" according to the ordinary meanings of those terms. Black's Law Dictionary (9th ed. 2009), 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." 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).

Although we agree that vigilantism under the ACC does not contain the foundation of a dangerous or violent crime, the plain language of "threat" under the ACC shows that the offense is characterized as dangerous or violent. The Applicant did not demonstrate how a "[s]erious threat to murder or serious injury to someone" would not constitute a violent or dangerous crime. Furthermore, as reflected in the court record, the Applicant kicked, punched, and threatened to kill the victim with a knife, signifying the violent or dangerous nature of his offense. In addition, while article 57 of the ACC discusses the "low dangerousness of the person" as a consideration for suspending imprisonment, the regulation at 8 C.F.R. § 212.7(d) relates to the dangerous or violent crime rather than to the individual. Moreover, the plain language of the regulation at 8 C.F.R. § 212.7(d) does not distinguish between the

severity of the dangerous or violent crime. For these reasons, the Applicant's threat conviction represents a dangerous or violent crime.

C. Extraordinary Circumstances

When a foreign national has been convicted of a violent or dangerous crime, the regulations governing the exercise of discretion are set forth in 8 C.F.R. § 212.7(d), and generally preclude a favorable exercise of discretion except in extraordinary circumstances, which include situations in which the foreign national has established "exceptional and extremely unusual hardship" if the benefit is denied, or situations in which overriding national security or foreign policy considerations exist.[1] However, even if an applicant can demonstrate the existence of these extraordinary circumstances, depending on the gravity of the applicant's offense, we may still decline to consent to his or her admission as a matter of discretion. On appeal, the Applicant asserts that extraordinary circumstances exist because denial of his admission into the United States would result in exceptional and extremely unusual hardship to his spouse, child, and himself.[2]

When assessing exceptional and extremely unusual hardship, it is useful to view the factors considered in determining the lower standard of extreme hardship. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62-64 (BIA 2001) (discussing exceptional and extremely unusual hardship factors in the context of cancellation of removal under section 240A(b) of the Act, 8 U.S.C. 1229b(b)). Factors deemed relevant in determining whether a foreign national has established the lower standard of extreme hardship include the presence of a lawful permanent resident or United States citizen qualifying relative in this country; the financial impact of departure from this country; and the age, health, and circumstances of qualifying relatives. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999).

"As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship." *Monreal-Aguinaga*, 23 I&N at 62. Exceptional and extremely unusual hardship, however, "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *Id.* While a fact pattern that is common and not substantially different from the hardships which would normally be expected upon removal might be adequate to meet the "extreme hardship" standard, these are not the types of hardship that would meet the significantly higher "exceptional and extremely unusual hardship standard." *Matter of Andazola-Rivas*, 23 I&N Dec. 319 (BIA 2002) (discussing exceptional and extremely unusual hardship factors in the context of cancellation of removal under section 240A(b) of the Act.)

At initial filing, the Applicant provided a statement from his spouse who indicated that she has split her time between Albania and the United States for the past two years. She stated that she resides with her elderly parents in the United States, including taking care of her father who suffers from hematochezia, diverticulosis, and internal hemorrhoids. Also, she reported that she pays for her education and the majority of her income goes toward childcare expenses for her son, now age six. Further, she stated that she suffers from depression and anxiety resulting from being separated from

[1] *See also Matter of C-A-S-D-*, 27 I&N Dec. 692, 696 (BIA 2019) (a foreign national may satisfy the heightened requirement by establishing exceptional and extremely unusual hardship to himself and/or his qualifying relatives.)

[2] The record does not indicate that there are any national security or foreign policy considerations in this case, and the Applicant does not make such claims on appeal.

the Applicant. The Applicant also offered samples of his spouse's bills, statements, and expenses. Moreover, he submitted medical records for his father-in-law and a mental health evaluation for his spouse. The evaluation reflects that she suffers from symptoms of depression and severe anxiety and recommends further psychiatric treatment. In addition, the record contains copies of labels of medications prescribed to the Applicant's spouse.

In response to the Director's request for evidence, the Applicant expresses that he has built a family together and is missing some of the most important days of his son's life. The Applicant also provided a psychiatric consultation for himself, reflecting that he suffers from depressive disorders as a result of difficult social situations and recommending the continuation of therapy with medication. In addition, the Applicant submitted an updated mental health evaluation for his spouse, reporting her emotional health has taken a downward turn, and she is worried about the mental health of their son because of the Applicant's absence. The evaluation diagnosed his spouse with generalized anxiety disorder, separation anxiety disorder, depressive disorder, and panic attacks. Further, the Applicant offered a letter from his son's childcare center stating that he has become somewhat difficult when trying to redirect him on activities, has a hard time relating to other kids or their family members, and speaks of loneliness of not being with the Applicant.

On appeal, the Applicant repeats the findings from the mental health and psychiatric evaluations and submits documentation, including evidence of his spouse's approval under the Family Medical Leave Act for her depression and anxiety, additional medical records for his spouse, medical records relating to his son's behavioral concerns, and medical and prescriptions records for the Applicant's in-laws. In addition, the Applicant provides a statement from his spouse indicating that since their son will be starting kindergarten and her need to keep a stable job, they will not be able to travel to Albania as often to see the Applicant. She also expresses concern for their son regarding his behavioral changes and his separation from the Applicant. In addition, she states that her health conditions have gotten worse and has had to stop taking classes and now only works one job. Further, she indicates her continuous care for her elderly parents, mentioning her father's chronic digestive disease and her mother's recent gallbladder surgery.

Upon review of the entire record, we acknowledge that the Applicant has shown the emotional difficulties experienced by the family due to his separation. In addition, the Applicant has demonstrated the hardships faced by his spouse in raising a child by herself, taking classes and working two jobs at times, and caring for her elderly parents who have their own health issues. However, the Applicant repeats the findings of the physicians and lists documentation on appeal, and he does not explain or establish how they show exceptional and extremely unusual hardship. The record does not reflect that the hardships are substantially beyond ordinary hardships that would be expected in instances of family separation. *See Monreal-Aguinaga*, 23 I&N at 62. Moreover, while the Director determined that the evidence sufficiently demonstrated extreme hardship, we conclude that the aggregate medical, psychological, and financial factors, when reviewed individually and cumulatively, are insufficient to meet the significantly higher standard of exceptional and extremely unusual hardship. *See Andazola-Rivas*, 23 I&N at 319. As such, the Applicant has not demonstrated that he merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d).

III. CONCLUSION

The Applicant, having been convicted of a crime involving moral turpitude that is also a dangerous crime, has not demonstrated extraordinary circumstances under a heightened discretionary standard. Accordingly, the Applicant has not established eligibility that approval of a waiver of inadmissibility under section 212(h) of the Act is warranted as a matter of discretion.

ORDER: The appeal is dismissed.