U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17949977

Date: FEB. 18, 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 evidence did not establish any extraordinary circumstances for a favorable exercise of discretion. The Director first noted that the Applicant was inadmissible for having been convicted of a crime involving moral turpitude. The Director then determined that although the Applicant established his rehabilitation and demonstrated extreme hardship to his lawful permanent resident spouse and U.S. citizen daughter, his conviction was for a violent or dangerous crime, making him subject to a heightened discretionary standard.

On appeal, the Applicant submits additional documentation and contends that his conviction was not for a violent or dangerous crime. He further maintains that he merits a favorable exercise of discretion.[1]

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further proceedings consistent with the foregoing analysis.

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. Section 212(h) of the Act provides for a discretionary 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

[1] Because the Applicant is residing abroad and applying for an immigrant visa, the U.S. Department of State makes the final determination concerning eligibility for a visa.

welfare, safety, or security of the United States, and the foreign national has been rehabilitated (section 212(h)(1)(A).

However, 8 C.F.R. § 212.7(d) limits the favorable exercise of discretion with respect to those inadmissible under section 212(a)(2) of the Act on account 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. With respect to the discretionary nature of a waiver, 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). Finally, 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

On appeal, the Applicant asserts that the crimes of which he was convicted were not violent or dangerous and contends that he merits a favorable exercise of discretion. The Applicant also submits new evidence in the form of an expert opinion from a foreign practicing attorney, who has specialized in the Russian Federation's criminal law and has practiced there for over two decades. The Russian attorney offered a legal analysis of the convicting statutes within the context of the facts and circumstances that resulted in the Applicant's criminal conviction. He explained why he thought that the Applicant's convictions should not be categorized as violent or dangerous.

Turning to the crimes in question, the record reflects that in 1984, the Applicant was convicted of "aggravated hooliganism" in violation of Article 206, Part 2 of the Criminal Code of the Russian Soviet Federative Socialist Republic, punishable by imprisonment of a term not to exceed five years, and "forcible robbery of citizens' personal property," in violation of Article 145, Part 2 of the Criminal Code of the Russian Soviet Federative Socialist Republic and punishable by imprisonment of no more than seven years. The Applicant was ordered to serve a two-year prison sentence, which was suspended on the condition that he serve two years of "mandatory labor." A consular officer of the U.S. Department of State (DOS) determined that the Applicant was inadmissible for having been convicted of a crime involving moral turpitude. As noted above, although the Director subsequently found that the Applicant had established rehabilitation and demonstrated extreme hardship to his qualifying relatives – his lawful permanent resident wife and U.S. citizen daughter – the Director concluded that the Applicant's conviction was for a violent or dangerous crime and that the Applicant had not established extraordinary circumstances, including exceptional or extremely unusual hardship to his wife and daughter.

The submitted translation of the Applicant's sentencing document describes the incident that resulted in the Applicant's criminal conviction. It states that the Applicant, while intoxicated, approached one of the two victims and punched him "once in the face" and that he, along with two other defendants, kicked the same victim "several times." The Applicant then knocked the second victim to the ground using his shoulder. Although the Applicant assisted the latter victim by helping him to his feet, he later demanded, under threat of beatings, that the latter victim remove his shoes and turn them over to the defendants. Consequently, the Applicant was charged with and convicted of "aggravated hooliganism" and "forcible robbery of citizens' personal property," both of which were described as crimes that were "accompanied by violence."

In determining whether a crime is violent or dangerous 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" are not defined in 8 C.F.R. § 212.7(d), and we are aware of no precedent decision or other authority containing a definition of these terms as used in the regulation. We therefore interpret the phrase "violent or dangerous crimes" in accordance with the plain or common meaning of its 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," 3) "[v]ehemently or passionately threatening." It defines dangerous as ""perilous, hazardous, [or] unsafe," or "likely to cause serious bodily harm."

The translated court documents expressly state that the Applicant was found guilty of crimes that were "accompanied by violence," thereby indicating that the Applicant's crimes contain elements involving violent or dangerous behavior. As such, we will not disturb the Director's finding that the Applicant was convicted of a violent or dangerous crime and that in order to merit a favorable exercise of discretion, he must meet a heightened discretionary standard by demonstrating that refusal to admit the Applicant would result in exceptional and extremely unusual hardship.

Although the denial includes a discussion of exceptional and extremely unusual hardship, the Director incorrectly limited this analysis to hardship to the Applicant's wife and daughter, who are qualifying relatives for the purposes of establishing extreme hardship under section 212(h)(1)(B) of the Act. However, exceptional and extremely unusual hardship under 8 C.F.R. § 212.7(d) is part of the discretionary determination and is distinct from determining extreme hardship to a qualifying relative. The Director also imposed an undue evidentiary burden by requiring the Applicant to demonstrate exceptional and extremely unusual hardship to his qualifying relative "with clear and convincing evidence," rather than the applicable preponderance of the evidence standard.

Accordingly, we are returning the matter to the Director to conduct a proper analysis of the evidence and to determine whether the Applicant demonstrated exceptional and extremely unusual hardship and whether the Applicant would therefore merit a favorable exercise of discretion.

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