U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18189295

Date: FEB. 22, 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 sections 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 Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act as someone who had been convicted of a crime involving moral turpitude (CIMT) and that he had not established waiver eligibility on the basis of rehabilitation or extreme hardship to a qualifying relative if the waiver is denied. The Director additionally held that the Applicant's conviction was for a violent or dangerous crime as contemplated in 8 C.F.R. § 212.7(d) and as such he must be held to a heightened discretionary standard of exceptional and extremely unusual hardship.

On appeal, the Applicant asserts that the Director failed to consider previously submitted evidence. He further asserts that this oversight resulted in a misstatement of facts pertaining to the Applicant's criminal record and an incorrect determination that his foreign conviction was for a violent or dangerous crime. The Applicant further argues that the Director incorrectly required a showing that the Applicant's wife would experience exceptional and extremely unusual hardship as opposed to extreme hardship, thereby applying the wrong evidentiary standard.

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)(1)(A) 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 welfare, safety, or security of the United States, and the foreign national has been rehabilitated. Alternatively, a waiver is available for individuals who demonstrate that denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act.

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

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) [*see also Cisneros v. Lynch*, 834 F.3d 857, 865 (7th Cir. 2016); *Matter of Dominguez-Rodriguez*, 26 I&N Dec. 408, 413 n.9 (BIA 2014)]. 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," or 3) "[v]ehemently or passionately threatening." It defines dangerous as "perilous, hazardous, [or] unsafe," or "likely to cause serious bodily harm." There is no requirement that physical force must have been used or that a firearm must have been involved.

Here, the record reflects that the Applicant had the following criminal convictions in England:

1. In 1975 the Applicant was convicted of theft at the [redacted] Juvenile Court.
2. In 1978 he was convicted of burglary at the [redacted] Crown Court under Sec. 9 of the Theft Act of 1968 and sentenced to two years of probation. In 1979, as a result of multiple new vehicular convictions – "taking conveyance without authority," driving with excess alcohol, reckless driving, no insurance, and two counts of "minor road traffic offence," – the Applicant's original sentence of probation was changed and he was instead sentenced to '[redacted] Training,"[1] ordered to pay a fine, and was prohibited from driving for two years.
3. In 1992 he was convicted of breaching a community service order and driving without insurance.
4. In 1997 he was convicted of driving a motor vehicle with excess alcohol, resisting or obstructing a constable.

[1] Described by the Applicant as "youthful offenders detention and rehabilitation scheme."

In response to the Director's request for evidence (RFE), the Applicant provided a copy of an email sent to him in 2019 by an officer at the ACRO Criminal Records Office in the United Kingdom, which explains that the Applicant committed the crime of burglary in violation of Sec. 9 of the Theft Act of 1968 on one occasion and that there is no evidence that he was convicted of a second burglary offense. In a separate email from 2019, a senior criminal records administrator confirmed that the Applicant served his sentence and was released from "[redacted] training" in [redacted] 1980, thereby indicating that he complied with the terms of the sentence that was imposed upon him for the 1978 burglary offense.

In addition, in an effort to establish that the burglary was not a violent or dangerous offense, the Applicant provided an email that was sent in 2020 by an information compliance officer at the [redacted] Police Station in the United Kingdom. Although the officer stated that the police records associated with the Applicant's burglary offense were destroyed, she nevertheless offered an opinion in her professional capacity as to likelihood that the Applicant's offense was not of a violent or dangerous nature. The officer observed that the Applicant was not charged with aggravated burglary or robbery, both of which inherently involve an element of force or violence. She also reviewed related background material in the form of archived newspaper articles whose respective descriptions of the burglary consistently noted that the Applicant was among several other listed defendants who were involved in breaking into a commercial building and stealing sporting goods valued at approximately £5000. The officer observed than none of the articles described the criminal incident as one involving violence. Taking into account the totality of the available evidence, the information compliance officer concluded that the Applicant's criminal act was unlikely to have involved violence. The Applicant reiterated these points in his RFE response statement, where he highlighted the components of the convicting statute and pointed out that neither an act of violence nor an activity that is inherently dangerous to another is required to be found guilty of burglary under the UK statute in question.

Aside from noting that burglary is generally deemed to be a violent or dangerous crime, the Director offered no analysis of the evidence and therefore precluded a meaningful understanding of the factors that were considered in reaching the conclusion that the Applicant's burglary conviction in the United Kingdom was for a violent or dangerous crime that warrants the application of a heightened discretionary standard in making a determination as to whether the Applicant merits a waiver of inadmissibility. Further, although the Director acknowledged that more than 20 years had passed since the date of the Applicant's last conviction and observed the Applicant's community service and support from members of his community, the Director determined that the Applicant did not provide sufficient evidence that he complied with the sentencing agreements from his burglary conviction. However, it is unclear whether in reaching the conclusion that the Applicant did not meet the rehabilitation waiver requirements the Director considered the 2019 email from the senior criminal records administrator, who confirmed that the Applicant served his sentence and was released from "[redacted] training" in [redacted] 1980. We remand this matter for the Director to determine whether this evidence supports the Applicant's contention that he met the statutory requirements for a rehabilitation waiver and for a more thorough analysis of whether the Applicant's conviction constitutes a violent or dangerous crime. *See* section 212(h)(1)(A) of the Act.

Furthermore, even if an applicant does not meet the statutory requirements for a rehabilitation waiver, the Director should evaluate the record and determine whether that applicant established eligibility for a waiver on the basis of extreme hardship to their United States citizen or lawful permanent resident

spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. In the matter at hand, despite acknowledging that a demonstration of extreme hardship is one of two ways of attaining a waiver under section 212(h) of the Act, the Director conflated the heightened discretionary of exceptional and extremely unusual hardship with the issue of statutory eligibility under section 212(h)(1)(B) of the Act. The latter hinges on an applicant's ability to show extreme hardship to their qualifying relative. In this case the Applicant's spouse is a qualifying relative who would be considered in making the determination regarding his statutory eligibility; that spouse would also be considered under the heightened discretionary standard of "exceptional and extremely unusual hardship," which is part of a discretionary analysis performed only if an applicant establishes that they met the statutory eligibility requirement and was convicted of a crime that is deemed violent or dangerous.

Although the Director sought to determine the Applicant's statutory eligibility for a hardship waiver, he concluded that the Applicant did not demonstrate "exceptional and extremely unusual hardship" to his qualifying relative. The Director did not clearly reach a conclusion as to whether the Applicant established statutory eligibility for a hardship waiver under section 212(h)(1)(B) of the Act. In addition, as discussed above, because the Director did not provide an adequate analysis outlining the factors that contributed to the determination that the Applicant's crime was of a violent or dangerous nature, it is not clear that the Applicant should be subject to the heightened discretionary standard of exceptional and extremely unusual hardship.

In light of deficiencies described above, we hereby withdraw the Director's decision and remand the matter for further consideration of the Applicant's eligibility for a waiver. If a determination is made that the Applicant is not eligible for a waiver, the Director shall issue a new decision containing a more comprehensive and proper analysis of the evidence and an explanation of the basis for denial of the waiver application.

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.