U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15842737

Date: FEB. 28, 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 concluded that the Applicant had been convicted of two crimes involving moral turpitude and even though the Applicant was deemed to have demonstrated extreme hardship to his U.S. citizen spouse and children, the Director determined that the Applicant's conviction was for a violent or dangerous crime, making him subject to a heightened discretionary standard.

On appeal, the Applicant contends that his conviction was not for a violent or dangerous crime. He further maintains that he merits a favorable exercise of discretion.

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

The record shows that in [redacted] 2007, the Applicant was convicted of two offenses: Count 1 for possession of drug paraphernalia, a class 6 felony; and Count 2 for aggravated assault, a class 1 misdemeanor. The Applicant was placed on probation for two years and ordered to pay fines. A consular officer of the U.S. Department of State (DOS) subsequently determined that the Applicant was inadmissible under section 212(a)(1)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude.[1] As noted earlier, the Director determined that aggravated assault is a violent or dangerous crime and that the Applicant was therefore subject to the heightened discretionary standard at 8 C.F.R. § 212.7(d) and was required to establish extraordinary circumstances were present that warranted a favorable exercise of discretion. The Director determined that the Applicant does not merit a favorable exercise of discretion for a waiver under section 212(h) of the Act because he did not establish that exceptional and extremely unusual hardship would result if the waiver is denied.

On appeal, the Applicant argues that his conviction for aggravated assault is not a violent or dangerous crime and thus should not subject him to the heightened discretionary standard.

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 record indicates that the Applicant was convicted of committing an assault after entering a private residence with the intent to commit the

[1] The Director also noted that the Applicant was inadmissible under section 212(a)(1)(A)(iv) of the Act for a Class A medical condition as a drug abuser or addict and that this ground was not waivable. This determination was made by DOS in 2009 after the Applicant's initial immigrant visa interview, and it is not clear from the record whether the Applicant has submitted evidence to DOS to overcome this finding. Only medical examiners, such as panel physicians, civil surgeons, or other physicians designated by the Director of Health and Human Services, may make determinations of Class A medical conditions. *See* 42 C.F.R. § 34.

assault, in violation of Ariz. Stat. §13-1204(A)(5).[2] As such, we will not disturb the Director's finding that the Applicant was convicted of a crime that was unsafe, hazardous, or likely to cause serious bodily harm. Because he was convicted of a violent or dangerous crime, he must demonstrate the presence of extraordinary circumstances, such as exceptional or extremely unusual hardship to himself or his family members.

We find, however, that the Applicant correctly identified an error in the Director's application of the heightened discretionary standard. A showing of exceptional and extremely unusual hardship for the purposes of discretion is separate from the statutory requirement of extreme hardship to a qualifying relative under section 212(h)(1)(B) of the Act, and hardship to the Applicant and other relatives may be considered. As pointed out on appeal, the Director incorrectly considered only evidence of hardship to the Applicant's spouse and children and did not consider evidence pertaining to the Applicant's lawful permanent resident parents or to the Applicant himself.

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.

[2] Assault as defined in Ariz. Stat. §13-1203 involves causing another person physical injury, placing them in reasonable apprehension of imminent physical injury, or otherwise acting with the intent to injure, insult or provoke such person.