U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15922726

Date: JAN. 31, 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), for having been convicted of a crime involving moral turpitude.

The Director of the Nebraska Service Center concluded that the Applicant was inadmissible under Section 212(a)(2)(A)(i)(I) of the Act because he was convicted of a crime involving moral turpitude (other than a purely political offense). The record, including "Decree" from "People's Socialist Republic of Albania, Fier District People's Law Court," indicates that in 1985, the Applicant was convicted for "Appropriation of Socialist Property," and sentenced to five months of imprisonment, and for "Hitting of person because of his duty," and sentenced to three months of imprisonment. The "Decree" notes that "based on article 35 of Penal Code [the court] sentence[d] him to one single sentence of 6 (six) months of imprisonment."[1] The "Decree" describes the events that led to the convictions, stating that the Applicant stole a cart full of corn to feed his oxen, and "punched sector chief . . . on his face."

The Director denied the Applicant's Form I-601 waiver application, finding that he failed to establish that the denial would result in extreme hardship to his U.S. lawful permanent resident spouse and U.S. citizen daughter (his qualifying relatives), and thus, he did not qualify for a waiver under Section 212(h)(l)(B) of the Act. In addition, the Director determined that the Applicant's "Hitting of person because of his duty" offense qualified as a "violent or danger crime," and therefore, he was subject to a heightened discretionary standard of exceptional and extremely unusual hardship, which he did not meet. *See* 8 C.F.R. § 212.7(d).

Subsequently, the Director denied the Applicant's combined motions to reconsider and reopen the proceeding. In the motion decision, the Director again determined that the Applicant did not establish the requisite extreme hardship to his qualifying relatives, as required under Section 212(h)(l)(B) of the Act. The Director did not specifically discuss Section 212(h)(l)(A) of the Act. Regardless, the Director explained that the Applicant's conviction for "Hitting of person because of his duty"

[1] In the motion decision, the Director stated that the Applicant was sentenced to 14 months of imprisonment. We consider this error harmless, because the Applicant has had ample opportunities to present his arguments as well as evidence concerning his eligibility for the waiver, and because we exercise *de novo* review on appeal.

constituted a conviction for a "violent or dangerous crime," and as such, he must demonstrate exceptional and extremely unusual hardship to himself and/or his qualifying relatives, if his Form I-601 waiver application were denied. The Director concluded that the Applicant failed to meet the heightened discretionary standard.

On appeal, the Applicant argues that he is not subject to the heightened discretionary standard, contending that his "convictions for hitting a Soviet official and stealing corn were not violent or dangerous crimes," because "[s]uch simple assault and battery and theft of a minor amount of corn, which occurred over 30 years ago, do not constitute violen[t] and dangerous crimes." He further claims that he has established eligibility for a waiver under Section 212(h)(1)(A) of the Act because his activities that led to the convictions occurred more than 15 years ago, his admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and he has been rehabilitated. He also contends that he has established eligibility for a waiver under Section 212(h)(l)(B) of the Act because he has shown the denial of the waiver would result in extreme hardship to his qualifying relatives.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

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. 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 noncitizen has been rehabilitated. Section 212(h)(l)(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. If a noncitizen demonstrates his or her eligibility under Section 212(h)(l)(A) or (B) of the Act, U.S. Citizenship and Immigration Services (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.

With respect to the discretionary nature of a waiver, the burden is on the noncitizen to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the noncitizen's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300. However, a favorable exercise of discretion is not warranted for noncitizens who have been convicted of a violent or dangerous crime, except in extraordinary circumstances, such as cases involving national security or foreign policy considerations, or when a noncitizen "clearly demonstrates that the denial . . . would result in exceptional and extremely unusual hardship." 8 C.F.R. § 212.7(d). In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board of Immigration Appeals determined that exceptional and extremely unusual hardship "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member

leaves this country." In assessing exceptional and extremely unusual hardship, the hardship factors used in determining extreme hardship should be considered and all hardship factors should be considered in the aggregate. *Id.* at 63-64.

Even if the noncitizen were able to show the existence of extraordinary circumstances pursuant to 8 C.F.R. § 212.7(d), that alone would not be enough to warrant a favorable exercise of discretion. *See Matter of Jean*, 23 I&N Dec. 373, 383 (A.G. 2002) (providing that depending on the gravity of the underlying criminal offense, a showing of exceptional and extremely unusual hardship might still be insufficient to grant the immigration benefit as a matter of discretion).

II. ANALYSIS

The record indicates that in 1985, the Applicant was convicted of "Appropriation of Socialist Property" and "Hitting of person because of his duty." According to the "Decree," the Applicant "worked for the transportation of corn with his cow cart from the field to the sector center." During one evening, he "loaded the cart completely with corn, covered it with husks and sets off towards his dwelling." On his way home with the corn, "he was caught by the sector superintendent" and "two brigade chiefs." After the Applicant "confessed that he had taken maize [corn] . . . to feed the oxen," the sector superintendent "ordered that the cart be returned to the sector." While the Applicant was at the sector, he "offloaded the maize to hide his tracks," but when the sector chief "intervened not to allow such action," the Applicant "punched [him] . . . on his face and went away running." The "Decree" specifies that the Applicant "hit the sector chief . . . because he discovered and denounced [the Applicant's] illegal actions," and that the Applicant's action "not only reveal that [he] had appropriated the corn but also that he had done that because of the created circumstances taking advantage of the transportation of maize during the day."

The "Decree" further states:

> The acts committed by the [Applicant] present stressed social danger. They violate the social relations established to protect and administer property and also hinder the normal activity of institutions and cadres to accomplish their tasks.
>
> Social danger is also posted by the [Applicant]. He has abused the trust as cooperative worker and has laid hands on common property and after committing this act, he has made all efforts to escape penal responsibility to the extent that he hit an official person because of his duty.

The Applicant is inadmissible under Section 212(a)(2)(A)(i)(I) of the Act for being convicted of a crime involving moral turpitude. The criminal record shows that he was convicted of two offenses, one of which was a theft offense. Specifically, he stole a cartful of corn and was convicted of "Appropriation of Socialist Property." In general, theft offenses are considered crimes involving moral turpitude. *See Matter of Garcia*, 11 I&N Dec. 521, 523 (BIA 1966); *see also Flores Juarez v. Mukasey*, 530 F. 3d 1020, 1022 (9th Cir. 2008) (noting that petty theft is a crime involving moral turpitude). The Applicant's "Appropriation of Socialist Property" offense qualifies as a crime

involving moral turpitude, and therefore, he is inadmissible under Section 212(a)(2)(A)(i)(I) of the Act.

The issues on appeal are whether his conviction of "Hitting of person because of his duty" was for a violent or dangerous crime, subjecting him to a heightened discretionary standard, and whether he merits a favorable exercise of discretion. We find that the Applicant was convicted of a violent or dangerous crime and that the record does not establish that he merits a favorable exercise of discretion. Our decision is based on a review of the entire record, which includes but is not limited to the Applicant's criminal record documentation; statements from the Applicant, his qualifying relatives and other family members; medical and health records of the Applicant and his qualifying relatives; and documents concerning the Applicant and his family members' financial situation.

A. Violent or Dangerous Crime

The Applicant contends he has not been convicted of a violent or dangerous crime, arguing that his "convictions for hitting a Soviet official and stealing corn were not violent or dangerous crimes." He also asserts that his crime of "hitting a Communist official do[es] not constitute a crime of moral turpitude (CIMT) and therefore [is] not violent or dangerous." The Applicant, however, does not point to any legal authority in support of his position that violent or dangerous crimes must also be crimes involving moral turpitude. Based on the evidence in the record, we conclude that his offense of "Hitting of person because of his duty" constitutes a violent or dangerous crime.

The words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not defined in the regulation or case law. *See* 67 Fed. Reg. 78675, 78677-78 (Dec. 26, 2002). 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).

Here, the "Decree" specifies that while the Applicant was in the process of concealing his theft offense, the sector chief "intervened." In response, the Applicant "punched [him] . . . on his face and went away running." The "Decree" notes that the Applicant "hit the sector chief . . . because he discovered and denounced [the Applicant's] illegal actions," and that "[t]he acts committed by the [Applicant] present stressed social danger." The "Decree" further states that "[s]ocial danger is . . . posted by the [Applicant]" because "he has made all efforts to escape penal responsibility to the extent that he hit an official person because of his duty." The record includes statements from the Applicant's family members acknowledging that the Applicant "punched the guy." The evidence shows that the Applicant used physical force on the sector chief when he confronted the Applicant for stealing a cartful of corn, and that the Applicant "punched" the sector chief "on his face" when he, as a government official, was in the course of carrying out his official duties. We find that the Applicant's offense of "Hitting of person because of his duty," which involved the use of force, and which led to

the imposition of a prison sentence, sufficiently support a finding that it was a violent or dangerous crime.

B. Exceptional and Extremely Unusual Hardship

Because his conviction for "Hitting of person because of his duty" constitutes a violent or dangerous crime, the Applicant is subject to the heightened discretionary standard specified under 8 C.F.R. § 212.7(d) and must establish extraordinary circumstances, such as national security or foreign policy considerations, or exceptional and extremely unusual hardship to himself or his qualifying relatives. In denying the Form I-601 waiver application, the Director found no indication of national security or foreign policy considerations and determined that the Applicant did not establish the requisite hardship. The record supports this finding.

The evidence in the record, including letters from the Applicant and his family members as well as medical documents, indicates that the Applicant is retired and currently living in Albania. He claims that he is retired from a government position after working many years, but that he has been unable to collect any pensions. Medical documents show that he has health issues – including having a heart attack in 2017 – and that he visits doctors and takes medication to manage his conditions. He states that although he has one child, a daughter, who lives in Albania, she cannot care for him because she is married. He acknowledges that he has a son living in Germany, and another daughter living in the United States.

Moreover, the evidence shows that the Applicant's lawful permanent resident spouse lives in the United States with one of their daughters. In 2020, the Applicant's spouse moved back to Albania for several months, but she was unable to find a job. While she previously worked in the United States, she does not currently have any interest in working. According to her medical documents, she has major depressive disorder, and takes medication to manage her conditions. A letter from her doctor provides that one of her psychosocial stressors is that "her husband lives in Albania and she is able to see him very infrequently." Her medical documents also indicate that she experiences pain on her right arm and leg, for which she takes ibuprofen, and that she had surgery in 2000 for excessive lacrimation on her left eye. On appeal, the Applicant submits airline tickets showing that she and their daughter's family visited Albania between June and July 2021.

Furthermore, the record indicates that the Applicant's U.S. citizen daughter has been sending money to the Applicant for food and medical care. She claims that her actions have led to tension between her and her spouse. She alleges that she relies on the Applicant's spouse for childcare and that she could not afford childcare in her absence. She also states that she has been sad and crying about the Applicant's inability to come to the United States and that her emotional state has affected her children. Medical documents provide that she has experienced anxiety and depression. On appeal, the Applicant indicates that his grandson died soon after birth 10 years ago, which has negatively impacted his daughter.

The evidence shows that the Applicant and his qualifying relatives have experienced, and will likely continue to experience, emotional and financial hardship as a result of the denial of his Form I-601 waiver application. We acknowledge the difficulties that the Applicant as well as his qualifying relatives have experienced, and will likely continue to experience, due to separation. However, the

record is insufficient to confirm that the severity of the hardship rises to the level of the requisite exceptional and extremely unusual hardship, required under 8 C.F.R. § 212.7(d). *See Monreal-Aguinaga*, 23 I&N Dec. at 62.

The medical documents indicate that the Applicant and his qualifying relatives have health related issues. The documents also show that they are under care of medical professionals and are taking medication to manage their conditions. The record, including the medical documentation, does not sufficiently confirm that their medical conditions have severely limited their daily activities or significantly impacted their daily lives. Instead, the evidence reveals that the Applicant's U.S. citizen daughter works; his lawful permanent resident spouse worked until recently and is caring for her grandchildren; and the Applicant worked in Albania until his recent retirement.

Additionally, while the separation has had a negative impact on the Applicant's qualifying relatives' financial situation – for example, documentation shows that his daughter carries credit debts, is responsible for mortgage and car payments, and has bank accounts with low cash balances – the record fails to confirm that the impact is "'substantially' beyond the ordinary hardship that would be expected when a close family member" is not in the United States. *See Monreal-Aguinaga*, 23 I&N Dec. at 62. Significantly, the Applicant acknowledges on appeal that both his U.S. citizen daughter and her spouse are gainfully employed in the United States, and they own a home and at least one vehicle.

Moreover, the documentation indicates that the Applicant's qualifying relatives have been able to visit him in Albania. For example, his spouse was in Albania for months between 2020 and 2021, and she, along with her daughter's family, returned to Albania for a month in the summer of 2021. We have considered all claimed hardship factors in the aggregate and conclude that they are insufficient to satisfy the requisite level of hardship specified under 8 C.F.R. § 212.7(d); *see also Monreal-Aguinaga*, 23 I&N Dec. at 62.

Alternatively, even if we were to find that the Applicant had established that the denial of his Form I-601 waiver application would result in exceptional and extremely unusual hardship, we nonetheless would decline to favorably exercise our discretion in this case. The Applicant has not fully accepted responsibility for his actions which led to his convictions. Specifically, he has repeatedly claimed that the crime of "Hitting of person because of his duty" was a minor offense, even though it involved him punching an official, who was carrying out his official duties, on the face, and for which he served an imprisonment sentence. As such, even considering all the positive factors in the case – including the Applicant's family ties in the United States, letters of support, as well as the claimed hardship – and considering the record in its entirety, we do not find that the favorable factors outweigh the negative ones. *See Jean*, 23 I&N Dec. at 383.

III. CONCLUSION

The Applicant, having been convicted of a crime involving moral turpitude, as well as a violent or dangerous crime, has not demonstrated extraordinary circumstances required under 8 C.F.R. § 212.7(d). *See Monreal-Aguinaga*, 23 I&N Dec. at 62. Accordingly, he has not established that

approval of his I-601 waiver application under Section 212(h) of the Act is warranted as a matter of discretion.

In visa petition proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act. Here, that burden has not been met.

ORDER: The appeal is dismissed.