



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 16287629

Date: JUN. 7, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Brazil, seeks a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v) and 1182(h).

The Applicant filed the instant application because the Department of State (DOS) found him inadmissible for accruing unlawful presence in the United States of one year or more before departing and seeking admission within 10 years of his last departure, and for having been convicted of a crime involving moral turpitude (CIMT). The Director of the Nebraska Service Center denied the waiver application finding that the Applicant's CIMT conviction was one for "a violent or dangerous crime" and that the Applicant was subject to the heightened discretionary standard for a violent or dangerous crime, as required by 8 C.F.R. § 212.7(d) (hardship rising to the level of exceptional and extremely unusual). The Director further determined that unfavorable factors outweighed the favorable factors so a favorable use of discretion would not be warranted.

On appeal, the Applicant asserts that his "guilty filed" disposition is not considered a conviction for immigration purposes and thus he was never convicted of a CIMT. Furthermore, the Applicant argues that U.S. Citizenship and Immigration Services (USCIS) improperly weighed this conviction in its discretionary analysis. He contends the instant application should be granted since he has met his burden to waive his ground of inadmissibility of unlawful presence.

The record reflects that DOS found the Applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accrued unlawful presence and under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a CIMT. After submission of the instant appeal, DOS removed its section 212(a)(2)(A)(i)(I) inadmissibility finding.

Since the Applicant's CIMT inadmissibility has been removed, the Applicant is not subject to the heightened standard as required by 8 C.F.R. § 212.7(d) and does not need to demonstrate hardship rising

to the level of exceptional and extremely unusual.<sup>1</sup> Although the Director's decision concluded that the Applicant had not established exceptional and extremely unusual hardship, the Director does not appear to have determined whether the Applicant had shown extreme hardship to a qualifying relative for his unlawful presence.<sup>2</sup> Therefore, we find it appropriate to remand the case to the Director to make a determination in the first instance as to whether the Applicant has demonstrated extreme hardship. Since the Applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for accruing unlawful presence in the United States of one year or more, he must first establish extreme hardship to his U.S. citizen spouse or any other appropriate qualifying relative. If the Director finds that the Applicant has shown extreme hardship to his qualifying relative(s), then the Director must consider whether the Applicant merits a favorable exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

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<sup>1</sup> 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.

<sup>2</sup> In their decision, the Director stated the Applicant has established his spouse and child are U.S. citizen (USC) relatives and that the Applicant's "qualifying relatives would suffer extreme hardship if the waiver [were] not granted." While the inadmissibility waiver for a CIMT states that extreme hardship includes an applicant's USC and legal permanent resident (LPR) spouse, parent, son, or daughter, the unlawful presence waiver restricts the extreme hardship analysis only to an applicant's USC or LPR resident parent or spouse. Section 212(a)(9)(B)(v) and 212(h) of the Act. In this instance, the Director did not clearly indicate if the extreme hardship analysis included his spouse and children or was limited to his spouse.