



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

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

In Re: 18490651

Date: JUN. 14, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant 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 Office denied the application, concluding that the Applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for having committed a crime involving moral turpitude (assault with a dangerous weapon); and that his conviction was also a violent or dangerous crime, as set forth at 8 C.F.R. § 212.7(d). The Director determined that although the Applicant demonstrated that his U.S. citizen spouse would experience extreme hardship if he were denied admission, he did not establish that he merited a favorable exercise of discretion.

On previous appeal, the Applicant conceded that his conviction is a crime involving moral turpitude, that he is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and that the offense also qualifies as a violent or dangerous crime under 8 C.F.R. § 212.7(d). While he acknowledged the Director's determination that he established extreme hardship to his spouse under section 212(h)(1)(B) of the Act, he disputed the finding that the record contained insufficient evidence to merit a favorable exercise of discretion. He also asserted that the Director erred in not weighing all of the positive factors in his case and claimed that the totality of the evidence in the record established that he and his U.S. citizen spouse, children, and parents would experience exceptional and extremely unusual hardship as required under 8 C.F.R. § 212.7(d).

We remanded the case stating that the Director did not properly consider all the claimed positive factors in his case and to re-evaluate all the factors to determine whether they meet the heightened standard of discretion under 8 C.F.R. § 212.7(d). Subsequently, the Director issued a new denial decision. The Director concluded that the hardships experienced by the Applicant's U.S. citizen spouse and children do not rise to the level of exceptional and extremely unusual hardship as required under 8 C.F.R. § 212.7(d) and denied the waiver again as a matter of discretion. The Director's decision also referenced the absence of any "restitution" in the Applicant's conviction.

In these proceedings the Applicant has the burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N

Dec. 369 (AAO 2010). Upon de novo review, we will remand the matter to the Director for the entry of a new decision.

On this appeal, the Applicant contends that the Director still has not fully considered all the factors, and that the totality of the evidence in the record establishes that a favorable exercise of discretion is warranted. 8 C.F.R. § 212.7(d). Further, the Applicant asserts that the Director made erroneous statements in the decision that do not relate to this case, and that the Director also made procedural errors while the appeal is pending.

Upon review, we conclude that the Director did not discuss all of the claimed positive factors in the case. We note again that these factors must be properly evaluated to determine whether favorable factors in the Applicant's case are outweighed by unfavorable factors. For example, the Director only considered evidence of hardship to the Applicant's spouse and children but not the Applicant's U.S. citizen parents or to the Applicant himself. We note that showing of exceptional and extremely unusual hardship for the purposes of discretion under 8 C.F.R. § 212.7(d) 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.

We further note that the Director made erroneous statements in the denial that do not pertain to the case. Specifically, the Director stated that "a very insignificant portion of your restitution order has been satisfied," but the record does not establish that the Applicant has a restitution order to satisfy. This statement is followed by an incomplete sentence. Statements that do not pertain to the case should be withdrawn.

In addition, the Director issued a request for evidence (RFE) on December 3, 2020, requesting additional evidence, but the Form I-290B, Notice of Appeal or Motion, was filed September 30, 2020, and the Applicant indicated that he is filing an appeal. There is no record that the case was reopened on a service motion under 8 C.F.R. 103.5(a)(5)(ii). Therefore, the appeal was pending, and within the AAO's jurisdiction when the Director improperly issued the RFE.

Accordingly, we are returning the matter to the Director for proper processing of the case and to conduct a proper analysis of the evidence 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 decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.