U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7747370

Date: NOV. 08, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of the Philippines, 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 (CIMT).

The record shows that a U.S. Department of State (DOS) consular officer found the Applicant inadmissible to the United States under Section 212(a)(2)(A)(i)(I) of the Act because he was convicted of a CIMT. The Director of the Nebraska Service Center denied the Form I-601 waiver application, concluding that the Applicant was inadmissible for having been convicted of a CIMT and that his conviction was for a violent or dangerous crime as contemplated in 8 C.F.R. § 212.7(d), making him subject to a heightened discretionary standard. The Director then determined that evidence did not establish any extraordinary circumstances for a favorable exercise of discretion.[1] On appeal, the Applicant asserts that the Director erred by not properly analyzing whether his conviction is for a CIMT.

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 (CIMT) (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 that led to the conviction 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)(1)(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 eligibility

[1] In 2013 a DOS consular officer had also found the Applicant inadmissible for having been convicted of a CIMT and in 2015 Director denied the Applicant's previous waiver application as a matier of discretion making the same determinations as is the instant proceeding.

under Section 212(h)(1)(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 (Board) 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

A. Director's Decision

The record reflects that in 2007 the Applicant was convicted in the Municipal Trial Court of [redacted] Province of [redacted] in the Philippines of serious physical injuries for an incident that took place in 1998. He was sentenced to a minimum of four months and one day to a maximum of two years, four months of prison with fines and restitution. The Director found the Applicant's conviction for a CIMT, and that the Applicant could seek a waiver based on rehabilitation. The Director identified the Applicant's favorable factors as the 20 years since the crime occurred and that he completed his sentence, was active in his community, had ties to the United States, had no immigration violations, and established extreme hardship to a qualifying relative parent. The Director identified the unfavorable factors as the Applicant's conviction and his actions during the crime which included an assault with fistic blows and violence inflicting physical injuries on the victim that required medical attendance for a period of one-to-one-and-half months and incapacitated him from performing his customary labor during that time. The Director found that as there was no evidence of national security or foreign policy considerations, the Applicant's case was adjudicated for exceptional and extremely unusual hardship but concluded that USCIS generally does not exercise favorable discretion in cases of violent or dangerous crimes without extraordinary circumstances and that the Applicant did not demonstrate extraordinary circumstances.

B. CIMT Inadmissibility

The statute under which the Applicant was convicted is Article 263, paragraph 4 of the Revised Penal Code of the Philippines[2] that provides, in pertinent part:

> Serious physical injuries. — Any person who shall wound, beat, or assault another, shall be guilty of the crime of serious physical injuries and shall suffer:
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> > 4. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period, if the physical injuries inflicted shall have caused the illness or incapacity for labor of the injured person for more than thirty days.

On appeal, the Applicant argues, through counsel, that the Philippine statute is overbroad and indivisible with no intent requirement, that it includes no weapons and no level of scienter, that for conviction it is not necessary to even be reckless, and that a conviction only requires that an assault occurred, and injury resulted, even if the action and injury were unintended.[3] He maintains that the minimum conduct necessary for a conviction is an assault which led to illness that caused the victim to miss at least 30 days of work. The Applicant contends that the statute addresses just one crime with several means of commission, it is not necessary to decide what action was committed for a conviction, and he could be punished for conduct that equated to simple assault.

Although the statute itself does not mention intent, the record from the Philippine court states that intent to injure is required: "By its nature, physical injuries as a felony is consummated, there must be intent to injure and the other offender is always liable for the direct and logical consequence thereof even though not intended." Those court records also refer to a submitted medical report that identifies the victim's injuries as cerebral concussion moderately severe; corneal abrasion with subconjunctival hemorrhage to the head; multiple contusion with hematoma to the head; lacerated wound; linear abrasions; and lacerated wound upper lip. The report also stated that the victim needed one-and-a-half months to recuperate and was unable to work.

This specific intent to injure, along with the serious injuries required, make the Applicant's conviction one for a CIMT. In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. *Matter of Perez-Contreras*, 20 I&N Dec. 615, 618 (BIA 1992). Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. *Id.* Moreover, the Board has also found that a crime requiring the intentional causing of physical injury to another involves moral turpitude. *See Matter of Solon*, 24 I&N Dec. 239, 243-45 (BIA 2007). Counsel's argument that there was no intent or scienter requirements is unavailing, given that the Applicant's own criminal record reflects that intent to injure is required for conviction.

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[2] https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf.

[3] The Applicant cites to a Board of Immigration Appeals decision *Matter of Perez-Contreras*, 20 I&N Dec. 615, 618-619 (BIA 1992) that he states found an assault statute that imposed liability for causing injury to another through criminal negligence was not a CIMT.

We note further, however, that because the Applicant currently resides abroad and is applying for an immigrant visa, the U.S. Department of State makes the final determination regarding his inadmissibility.

C. Violent or Dangerous Crime

The regulation at 8 C.F.R. § 212.7(d) generally precludes a favorable exercise of discretion except in extraordinary circumstances. The Director indicated and the Applicant does not claim that there are any national security or foreign policy considerations, so to obtain this discretionary waiver he must demonstrate that the denial of the waiver application would result in exceptional and extremely unusual hardship. As noted above, in *Matter of Monreal-Aguinaga*, the Board 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 *Matter of C-A-S-D-*, 27 I&N Dec. 692, 697 (BIA 2019), the Board emphasized that an applicant who has been convicted of a violent or dangerous crime may satisfy the heightened requirement by establishing exceptional and extremely unusual hardship to himself or to his qualifying relatives.

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).

Although the Applicant contests the Director's finding that his conviction was for a CIMT, he does not address whether it was for a violent or dangerous crime, as determined by the Director. A review of the record shows that the actions by the Applicant included fistic blows and violence by hitting the victim, inflicting injuries that required medical attendance and that caused him to be unable to continue his work for a period of several weeks. Considering the terms violent and dangerous as described above, we agree with the Director's determination that the Applicant's conviction was for a violent or dangerous crime as his actions involved strong physical force and resulted in serious bodily injury, thus subjecting him to the heightened standard of establishing exceptional and extremely unusual hardship.

D. Discretion

In a declaration submitted with the waiver application the Applicant's parents stated that they came to the United States for a better life and have lived here since 2000, that they overcame financial struggles to buy a home and establish life, and that their other two sons and relatives also live in the United States, but the family is not complete without the Applicant whom they need for peace of mind. The parents maintained that due to separation from the Applicant they have missed many life events together and they send him money monthly as his salary is not enough for expenses. They contended

that if the Applicant were in the United States, he could work to help them and his siblings financially and with daily life as the parents need help from all their children because they are aging, and the father has medical issues and mobility problems following a stroke. They claimed that the father repairs cars while the mother is the primary breadwinner as a live-in caregiver.

A 2017 letter from a physician stated that the father is under care for prostate cancer, hypertension, diabetes mellitus 2, and a history of stroke with "prognosis is guarded" where he needed regular follow up. A 2016 medical discharge document showed the father had been admitted to a hospital with a stroke and placed off work from February 21, 2016, to March 6, 2016. The record also contains 2017 lab results. A 2017 evaluation of the mother by a psychologist indicated she was interviewed in 2014 and 2017 and showed that she described conflicts with family members, strains in her relationship with her spouse, stress at her job, and concerns for her children. The psychologist found that the mother remained depressed, claimed she does not feel real happiness, and had passive thoughts of suicide. The evaluation indicated that the mother claimed her health suffers from work and family stress and she referred to her work as physically exhausting and spiritually draining, leaving her anxious, overwhelmed, and disheartened. It also indicated that the mother reported that the Applicant makes her laugh and she missed him greatly, and that she hoped he would come to the United States to be a friend to her youngest son whom she described as having depression and always by himself.

Financial documents submitted to the record include a list of expenses, tax returns for 2012 through 2016, a 2017 mortgage statement, a 2017-18 insurance policy, 2017 bank statements, utility statements, and credit card statements.

The parents also asserted that they both need their medical insurance here to remain healthy but that in the Philippines their medical needs would not be met, they would lose health protection programs, and their conditions would become life threatening. They also contended that if they moved to the Philippines, they would lose income as no one there will hire people 60 years of age, they have no property or assets there, and no relatives are able to support them. The record contains affidavits from siblings of each parent stating that they are unable to financially support the couple. The Applicant also submitted country conditions information addressing medical, economic, and security situations in the Philippines.

In his statement the Applicant claimed that his conviction happened during his adolescent years, that he is haunted by his past, and that he should be given chance to prove his worth. He described his life as misery where he is heartbroken and distressed, missing his parents and siblings, and had been left alone to care for himself. The Applicant stated that although he gets financial assistance from his parents it does not compensate for the sadness of being alone.

The Director listed evidence provided by the Applicant in claiming that his parents experience hardship but determined it did not support a finding of exceptional and extremely unusual hardship. The Director noted specifically that evidence showed the father was treated for medical conditions, but he appeared to be stable, and the psychological evaluation did not provide a diagnosis or prognosis. The Director concluded that the parents appeared to have normal symptoms of separation from a family member and that financial records showed the Applicant's mother was able to support the household and although evidence showed that two sons were listed on income tax returns as dependent because they were out of work and living with their parents, the burden of supporting them was

temporary. The Director also found the financial evidence did not demonstrate extraordinary circumstances that warranted favorable consideration.

On appeal, the Applicant argues that the Director did not properly weigh evidence and must consider factors cumulatively. He asserts his father's medical prognosis was guarded, meaning in doubt, and that the psychological evaluation described his mother as overwhelmed and disheartened while working an exhausting job and described her as depressed with passive thoughts of suicide, which the Applicant contends is not normal. He maintains that tax returns showed his parents earned about $66,000 for 2016 while claiming a son as an exemption and that they struggle to pay debts on a shoestring budget, but that USCIS did not consider their future as his mother ages, will be unable to retire while work becomes more challenging, and any emergency could be financially crippling. He refers to his parents' statement that they cannot remain independent as they grow older and need assistance but maintains that his presence would improve their finances and give his mother the ability to care for her husband.

We acknowledge the hardships described by the Applicant's parents, their desire to have the Applicant join them, and their expectations for his emotional and financial help, however the record does not demonstrate that they suffer exceptional and extremely unusual hardship as a result of the Applicant's inadmissibility, as required. Medical records provide diagnoses for the father, but the submitted evidence does not detail the father's health conditions, any assistance needed, or the Applicant's ability to assist with his father's conditions. Further, the Applicant's parents have other adult children residing with them in addition to other relatives in the United States and there is no indication that all of them are unable or unwilling to provide any needed assistance. The psychological evaluation of the mother describes her as depressed and disheartened but did not provide a diagnosis, address her ability to function on a daily basis to meet her obligations, or describe specifically what assistance the Applicant would provide other than his mother's desire to have him with her. The submitted evidence does not provide sufficient detail concerning the ongoing impact of the parents' hardships on their daily lives that clearly demonstrates exceptional and extremely unusual hardship that would be alleviated by the Applicant's admission. The parents further assert that in the Philippines they would be unable to find adequate medical care or financial support. The Applicant submitted information describing general conditions in the Philippines, but insufficient evidence to establish that the parents would experience exceptional and extremely unusual hardship in their native Philippines.

The record does not contain sufficient evidence to establish the Applicant's denial of admission has or would cause exceptional and extremely unusual hardship to his family particularly after an already long separation since the parents came to the United States more than 20 years ago, in 2000. While we also recognize the Applicant's claim that he suffers living in the Philippines without his family, the record as it stands does not contain sufficient evidence, even alongside documentation of his family's hardship, to establish extraordinary hardship to the Applicant himself.

The Applicant, having been convicted of a crime involving moral turpitude, as well as a violent or dangerous crime, has not demonstrated extraordinary circumstances as required under 8 C.F.R. § 212.7(d). *See Monreal-Aguinaga*, 23 I&N Dec. at 62. Therefore, we do not find that the Director erred in denying the waiver application, due to statutory ineligibility and considering the Applicant's criminal history, 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.