



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

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

In Re: 20432737

Date: OCT. 27, 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). U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Nebraska Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded the even though the Applicant established extreme hardship to his U.S. citizen spouse, his only qualifying relative, that due to his violent or dangerous criminal activity, discretion should not be exercised in his favor. On appeal, the Applicant submits a brief and additional evidence advancing their eligibility claims. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we conclude that a remand is warranted in this case.

I. LAW

A 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 (CIMT) (other than a purely political offense), or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A) of the Act. There is a discretionary waiver of this inadmissibility ground if refusal 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. If the foreign national demonstrates the existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered “extreme,” the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630–31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural

readjustment were the “common result of deportation” and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

Once the foreign national demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the foreign national 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). We must balance the adverse factors evidencing an applicant’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 (citations omitted). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country while in compliance with our immigration laws (particularly where residency began at a young age), evidence of hardship to the foreign national and their family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

With respect to the discretionary nature of a waiver, when a foreign national has been convicted of a violent or dangerous crime, the regulations governing the exercise of discretion are set forth in 8 C.F.R. § 212.7(d), and generally preclude a favorable exercise of discretion except in extraordinary circumstances, which include situations in which the foreign national has established “exceptional and extremely unusual hardship” if the benefit is denied, or situations in which overriding national security or foreign policy considerations exist. However, even if an applicant can demonstrate the existence of these extraordinary circumstances, depending on the gravity of the applicant’s offense, consent to their admission as a matter of discretion may still be denied.

II. ANALYSIS

The Applicant is inadmissible due to his criminal history stemming from two incidents. The first from 1989 for assault with a weapon (a knife) for which the Applicant was convicted in 1990. For this crime, the Applicant was sentenced to nine months in custody and subject to a weapons prohibition order for five years. The second incident was a 2001 arrest for breaking and entering with the intent to do harm resulting in a 2002 conviction in which the Applicant receive a suspended sentence and one year of probation. The Director concluded both crimes constitute CIMTs. The Director also concluded that each offense amounted to “a violent or dangerous crime,” which introduced a heightened discretionary standard in which the Applicant must demonstrate an exceptional and extremely unusual hardship would result from the denial of his admission as a lawful permanent resident. 8 C.F.R. § 212.7(d).

While the 1990 incident apparently was a violent or dangerous crime, the 2001 incident is not as clear even though the Director stated both offenses elevated the Applicant’s case to the higher standard

under 8 C.F.R. § 212.7. Without more of an explanation from the Director, considering the 2001 offense as a violent and dangerous crime appears to be an error on the Director's part, and that has the potential to affect the case's outcome. Because the determination of whether a crime is violent or dangerous is part of the discretionary finding and not related to admissibility or eligibility requirements, it is circumstance-specific, and we do not conduct a categorical inquiry of the underlying criminal statute. Stated differently, USCIS may consider the criminal statute as well as the facts and circumstances surrounding the crime to determine whether it was violent or dangerous. However, the Director did not provide a discussion surrounding the 2001 offense to decide whether it was a violent or dangerous crime. The Applicant claims his former spouse took his property in the form of an address book, and he proceeded to her residence and entered by pushing one of her acquaintances aside when they were standing in the doorway so he could retrieve his property. The Director should determine if the Applicant sufficiently established those were the comprehensive facts relating to this incident, and if so, whether the 2001 offense was a violent or dangerous crime.

In denying the waiver application, the Director concluded the Applicant established his qualifying relative would suffer extreme hardship if the waiver were not granted. The Director, however, did not find in the Applicant's favor as it relates to whether he should be granted an approval as a matter of discretion; primarily because of the heightened standard required in this case. The Director mentioned the evidence and the Applicant's claims to include his spouse's emotional and mental hardships, her medical conditions that include open heart surgery, heart arrhythmia, reactive hypoglycemia, and general anxiety disorder. The Director acknowledged the claim that the Applicant's spouse was diagnosed with hyperthyroidism but that they failed to provide evidence to corroborate that claim.

Although the Director identified the positive and adverse factors in the case, they only offered a brief discussion on discretion and ultimately found the Applicant did not establish that the conditions his spouse was experiencing were exceptional and extremely unusual. The Director noted the Applicant's crimes were committed more than 15 years prior, he did not have any further encounters with law enforcement, and he was allowed to enter the United States on nonimmigrant visas.¹ It also appears that the Applicant came forward with the information relating to his 1989 offense in the interest of full disclosure. If that is the case, we consider it to be a positive factor as that offense did not appear to be part of the record prior to him raising it. The only adverse factors the Director listed consisted of the two crimes committed in 1989 and 2001.

On appeal, the Applicant offers new documentation from the same doctor who offered his spouse's clinical assessment before the Director. The material from this doctor not only addresses the shortcomings related to her thyroid condition, but also other medical and emotional related information the Director did not have at their disposal. Because the record does not reflect that the Director reviewed this additional documentation before forwarding the appeal to our office, and because the waiver denial did not offer a thorough weighing of the factors, we will return the matter

¹ Even though the Director acknowledged the nonimmigrant entries despite his criminal history, they did not directly acknowledge that the Applicant had multiple temporary waivers approved to allow him to enter the country.

to the Director to consider the new claims and evidence and to provide additional analysis regarding whether the Applicant warrants a waiver in the exercise of discretion.

Within that decision, the Director should first evaluate whether the statute as well as the facts and circumstances surrounding the Applicant's 2001 crime to determine whether it was violent or dangerous. That determination will properly set up the framework for the Director to also consider the offense from 1989 and to balance all the factors present in this case, to include those identified within the appeal brief. And we note that the requisite level of hardship must only be present, meaning it can be shown for the Applicant or anyone else, and not only for the qualifying relative. *See* 8 C.F.R. § 212.7.

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