U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22756073

Date: SEPT. 13, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, an Afghani citizen who resides in Afghanistan, 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 and a controlled substance violation. *See* Section 212(a)(2)(A)(i)(I), (II).[1]

The Director of the Nebraska Service Center explained in the decision denying the Applicant's Form I-601 waiver application that a U.S. Department of State (DOS) officer found him inadmissible to the United States under Section 212(a)(2)(A)(i)(I) of the Act because he was convicted of a crime involving moral turpitude, and under Section 212(a)(2)(A)(i)(II) of the Act because he was convicted of a controlled substance violation. The record shows that the Applicant entered the United States as a refugee in 1990 and adjusted his status to that of a lawful permanent resident in 1991. While living in the United States, he was convicted of assault and battery in 1992; assault and battery of a family member in 1996 and 2004; attempted possession of marijuana in 2004; stalking in 2004; and violation of a stalking protective order in 2005. He was removed from the United States to Afghanistan in 2006.

The Director denied the Applicant's Form I-601 waiver application, finding that he failed to establish that the facts of the case warranted a favorable exercise of discretion. The Applicant appeals, claiming that he "has demonstrated truly compelling countervailing equities that would outweigh the negative factors in his case, and that he warrants a favorable exercise of discretion." 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.

[1] The Director of the Nebraska Service Center previously denied the Applicant's Form I-601 waiver application. We remanded the matter, noting that the Director did not "appear to have addressed whether the Applicant had shown extreme hardship to a qualifying relative, as required for a waiver under Section 212(h)(1)(B) of the Act." We also noted that if the Applicant satisfied the requirements under Section 212(h)(1)(A) or (B) of the Act, then his "rehabilitation as well as any hardships to qualifying relatives and hardship to himself must be considered within the extraordinary circumstances context and as positive discretionary factors." The matter is now before us after the Director again denied the Applicant's Form I-601 waiver application.

I. LAW

A noncitizen convicted of (or who admits having committed, or who admits committing acts which constitute the essential elements of): (1) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime; or (2) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance is inadmissible. Section 212(a)(2)(A)(i)(I), (II) 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).

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).

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 Director concluded that the Applicant has satisfied the elements under Section 212(h)(l)(A) and (B) of the Act. Specifically, the Director explained on page 3 of the decision that the "evidence shows that [the Applicant] has been rehabilitated and [his] qualifying relatives," his U.S. citizen daughter and mother, "would experience extreme hardship" if his Form I-601 waiver application were denied.

The Director next concluded that the Applicant's 2004 stalking conviction constituted a violent or dangerous crime under 8 C.F.R. § 212.7(d); and as such, the Applicant must "clearly demonstrate that the denial [of his Form I-601 waiver application] would result in exceptional and extremely unusual hardship."[2] 8 C.F.R. § 212.7(d). The Director found that the evidence sufficiently showed that a denial of a waiver under Section 212(h)(l) of the Act would result in exceptional and extremely usual hardship to the Applicant and his qualifying relatives (his mother and daughter). The Director based the hardship finding on documentation indicating that the Applicant's qualifying relatives "have been diagnosed with Major Depressive Disorder, recurrent, severe, with anxious distress," and they "are both experiencing medical and psychological hardships"; deteriorating country conditions in Afghanistan, a country now controlled by the Taliban, and a country from which the Applicant and his mother were previously granted refugee status; as well as hardships related to the coronavirus (COVID-19) global pandemic.[3]

Notwithstanding the exceptional and extremely unusual hardship finding under 8 C.F.R. § 212.7(d), the Director denied the Applicant's Form I-601 waiver application because "the gravity of [his stalking] criminal offense as well as other unfavorable factors" outweigh the positive factors in this case. On appeal, the Applicant argues that the Director was limited to reviewing the gravity of the stalking offense in the discretionary consideration. We disagree. The Applicant is seeking a discretionary waiver of inadmissibility. As such, the burden is on him to establish that a waiver should be granted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N Dec. at 299. The Director must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented, including evidence of hardships, to determine whether the grant of a waiver in the exercise of discretion appears to be in the best interests of the United States. *Id.* at 300. In other words, the Director must consider all positive and negative

[2] The Applicant has not indicated, and the evidence does not demonstrate, that this matter involves national security or foreign policy considerations. *See* 8 C.F.R. § 212.7(d).

[3] As the Director explained, some of these factors are considered particularly significant factors under *USCIS Policy Manual*. *See* 9 *USCIS Policy Manual* B.5(D)-(E), https://www.uscis.gov/policy-manual/volume-9-part-b-chapter-5.

factors and weigh them to determine if the waiver application should be granted in the exercise of discretion. *See id.* at 299-300.

The evidence supports the Director's determination that the Applicant's Form I-601 waiver application should not be granted in the exercise of discretion. The evidence indicates that there are many positive factors, including particularly significant factors, in this case. The Applicant's daughter, son, mother, sisters, and other extended family members have lived in the United States for many years, with some born in the United States. The Applicant himself lived in the United States for approximately 15 years. He entered the United States as a refugee in 1990, when he was approximately 19 years old, and lived in this country until his removal in 2006, when he was approximately 35 years old. The record contains tax documents, showing that he worked and reported his earnings before his removal. The evidence sufficiently shows that his removal from and ineligibility to return to the United States have caused "extreme hardship" to his qualifying relatives, as well as "exceptional and extremely unusual hardship" to himself and others in his family. *See* Section 212(h)(l)(B) of the Act; *see also* 8 C.F.R. § 212.7(d). The record includes letters, psychological reports, and medical reports detailing the hardships that his qualifying relatives have experienced due to his removal and absence.

In addition, the country condition documents of Afghanistan support his contention that it is unsafe for his family members, including his elderly mother, to travel to Afghanistan to visit him. According to letters from his mother and daughter, they visited him in Afghanistan in 2017, but had to leave after a few days due to security concerns. Similarly, his U.S. citizen son stated in his letters that he visited the Applicant in Afghanistan for 14 days in or around 2020 but had concerns over his own and the Applicant's safety during the visit. The evidence also indicates that it could be unsafe for the Applicant if the Taliban learns of his extensive familial connection to the United States and having a sister who performs as a singer in the United States.

Other positive considerations include, the Applicant's convictions occurred between 1992 and 2005, approximately 14 to 27 years before he submitted his Form I-601 waiver application in 2019. There is no evidence indicating that he has committed other offenses after his 2006 removal from the United States. Furthermore, the record contains many letters from family members and friends attesting to his good moral character and explaining that most of his criminal convictions occurred during a challenging period, during which he and his ex-spouse were going through divorce and child custody proceedings.

While there are positive factors, including those we have discussed above, there are also substantial negative factors in this case. As noted, a DOS officer found the Applicant inadmissible to the United States for having been convicted of a crime involving moral turpitude and a controlled substance violation. *See* Section 212(a)(2)(A)(i)(I)-(II) of the Act. The Applicant has an extensive criminal history while he lived in the United States. In total, he has been convicted six times between 1992 and 2005. In 1992, he was convicted of assault and battery in Virginia, for which he was sentenced to a six-month imprisonment term. The judge's order specifies that he was originally "indicted for the felony of MAIMING" (emphasis in original), and that the original indictment charged that he did "maliciously cut, stab and wound" his victim "with the intent to maim, disfigure, disable or kill" the

victim. While the Applicant ultimately pled to the lesser charge of assault and battery, the gravity of his actions is a serious negative factor.

In a statement he filed with the Director in response to the Director's request for evidence, the Applicant provided the following description for the circumstances surrounding his 1992 offense: while his mother and the victim's spouse were talking on the phone, the Applicant overheard the victim, who is his uncle, making fun of his mother's appearance and the injuries she sustained after a car accident. The Applicant "got very upset," went to the victim's home and "asked him to apologize but he refused." After "yelling and fighting against each other," the Applicant "angrily left [the victim's] house, went back to [his] car and grabbed a knife." When he returned to the victim's home, the victim "was gone." The Applicant waited until the victim returned, and "went towards [the victim] when he was exiting the car and began fighting him." The Applicant admitted that he "wounded [the victim's] cheek and left shoulder" and then "left" the crime scene. The Applicant said he "felt remorseful for [his] actions" and "turned [him]self in and [was] taken into custody by the police." The record includes letters of support from the victim, stating that he had said "inappropriate words about [the Applicant's] mother," that the incident "is something that is long behind [them]," and that he has since "carried a close bond [with the Applicant]."

Based on the Applicant's description of the incident, he escalated the severity of his actions multiple times, from confronting the victim verbally, to "yelling and fighting," to retrieving a weapon, to waiting for the victim to return and injuring his "cheek and left shoulder." As noted, the Applicant was originally charged with "the felony of MAIMING" (emphasis in original), and the indictment alleged that he did "maliciously cut, stab and wound" his victim "with the intent to maim, disfigure, disable or kill" the victim. The Applicant's statement appears to support this felony offense charge.[4] The Applicant ultimately pled to the lesser charge of assault and battery, receiving a six-month imprisonment sentence for the crime. Although his crime occurred some time ago, the gravity of the offense and the Applicant's description of his actions render the incident a serious negative factor.

The Applicant's criminal history is not limited to the 1992 offense. As noted, he has been charged and convicted of multiple assault and battery offenses. In his statement to the Director, the Applicant indicated that in 1996, he got angry when his then-spouse "threw herself on [him] and started punching [him]." He stated that she "got hurt in [his] attempt to get her off [him]." He also stated that she "had . . . gotten hurt when [they] got into [their] argument." While he acknowledged that "[his] actions were wrong and [he] wish[ed] it never happened," he also blamed his then-spouse for her injuries. According to the police report, the officer "observed a red mark under [the Applicant's then-spouse's] left eye," "scratches on both of her arms and a red mark on her right foot." The conviction record does not indicate that the Applicant suffered any injuries or had acted in self-defense, as he claimed in his statement. Rather, the conviction record shows that he was tried and found guilty of assault and battery of his then-spouse and received a 60-day imprisonment sentence.

The record shows that the Applicant continued to assault his ex-spouse after the 1996 incident. According to his statement to the Director describing his 2004 assault and battery conviction, during "a heated discussion," he "grab[bed] keys from [her] hands" and because he "grabbed the keys

[4] While we need not make such a determination in this case, it appears that the Applicant's 1992 assault and battery offense constitutes a violent or dangerous crime under 8 C.F.R. § 212.7(d).

forcefully, this accidentally cut her ring finger on her hand." The Applicant attempted to minimize his actions by claiming that her injuries were "accidentally" inflicted. The police report indicates that the Applicant's then-spouse's left hand "had an approximately quarter-inch laceration on the ring finger and an approximately three-inch abrasion resembling a scratch on the inside of her right forearm." The Applicant was again convicted of assault and battery of his ex-spouse.

In addition to these assault and battery convictions, the Applicant was convicted of stalking his ex-spouse in 2004. According to the Applicant, after he and his ex-spouse divorced, he "would drive to her house to see [their] children" when he knew "he wasn't supposed to do this." According to the conviction record, between [redacted] 2003 and [redacted] 2003, the Applicant on "more than one occasion engage[d] in conduct directed at [his ex-spouse] with the intent to place, or when [the Applicant] knew or reasonably should have known that the conduct placed [her] in reasonable fear of death, criminal sexual assault, or bodily injury to that person or to that person's family or household member." The Applicant's stalking conviction led to a 60-day imprisonment sentence. The judge also ordered: "Contact prohibited between defendant [the Applicant] and victim [his ex-spouse]/victim's family or household members."

After his assault and battery as well as stalking convictions, the Applicant was convicted of violating a stalking protective order entered in favor of his ex-spouse. Court documents reveal that in [redacted] 2004, the Applicant was arrested for violating a protective order. That arrest resulted in the judge ordering "a *nolle prosequi* on prosecution's motion." Approximately a year later, in 2005, the Applicant was again arrested for violating a stalking protective order, for which he was found guilty and received an imprisonment term of 365 days, with 185 days suspended with conditions.

There are other negative factors in this case. For example, in 2004, the Applicant was convicted of attempted possession of marijuana in the Superior Court of [redacted] and received a 120-day imprisonment sentence (that was suspended) and 1 year of probation. In [redacted] 2005, while the Applicant was in custody, he filed a request for a change in custody status, but an immigration judge denied the request, finding that he posed "potential danger to community."

The record shows that during his time in the United States between 1990 and 2006, the Applicant committed multiple offenses, resulting in six convictions between 1992 and 2005. The Applicant began committing crimes within two years of arriving in the United States, and his criminal actions continued until shortly before he was removed from the United States for his convictions. While the Applicant argues that he committed his last crime many years ago, and that some of his offense could be considered minor, the record reveals that many of his crimes involved violence or physical force that resulted in injuries to the victims, and that at least one of the crimes involved a weapon. The repeated and grave nature of the Applicant's offenses, which led to multiple imprisonment terms, is a serious negative factor.

Additionally, the Applicant has not fully accepted responsibilities for his offenses. For example, as relating to his 1996 offense, he alleged that he injured his ex-spouse to protect himself; and as relating to his 2004 offense, he claimed that her injuries were "accidentally" inflicted. Moreover, the Applicant had exhibited disregard to rules of law while in the United States. Specifically, in 2004, he was convicted of stalking his ex-spouse and ordered not to have contact with her. Yet, in 2004 he was arrested for violating the protective order, and in 2005, he was again arrested, and then convicted, for

violating the stalking protective order. The Applicant's disregard for the judge's order is another serious negative factor. We have considered all the positive factors in the case – including the Applicant's family ties in the United States, letters of support, hardships on him and his family members, the country conditions in Afghanistan, and particularly significant factors identified in the *USCIS Policy Manual*[5] – and considering the record in its entirety, we find that the favorable factors do not outweigh the negative ones. *See Jean*, 23 I&N Dec. at 383.

III. CONCLUSION

The Applicant has been convicted of a crime involving moral turpitude, a controlled substance violation, as well as a violent or dangerous crime. *See* Section 212(a)(2)(A)(i)(I)-(II) of the Act; 8 C.F.R. § 212.7(d); *Monreal-Aguinaga*, 23 I&N Dec. at 62. While he has established the requisite hardships, he has not established that approval of his Form I-601 waiver application under Section 212(h) of the Act is warranted as a matter of discretion. Specifically, he has not demonstrated that the favorable factors outweigh the negative ones in this case. 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.

[5] *See supra* note 3.