U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22278365

Date: SEP. 15, 2022

Appeal of St. Paul, Minnesota Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the St. Paul, Minneapolis Field Office denied the waiver application, concluding that the Applicant did not establish: (1) extreme hardship to his wife; and (2) that he merits a favorable exercise of discretion. On appeal, the Applicant submits new evidence and argues that the Director did not properly consider the evidence of his wife's hardship and that a favorable exercise of discretion is warranted.

The Applicant bears the burden of proof in these proceedings to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for entry of a new decision.

I. LAW

Any 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 (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. Foreign nationals found inadmissible under section 212(a)(2)(A) of the Act may seek a waiver of inadmissibility under section 212(h) of the Act. A discretionary waiver is available if denial 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.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). While some degree of hardship to qualifying relatives is present in most cases, 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. *See Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

Only after the requisite extreme hardship to a qualifying relative(s) is established, must USCIS evaluate whether the foreign national merits the exercise of favorably discretion to grant the waiver. Section 212(i) of the Act.

II. ANALYSIS

The Applicant, a native and citizen of Mexico, was found inadmissible under sections 212(a)(2)(A)(i)(I) of the Act, for a crime involving moral turpitude. The Applicant does not contest inadmissibility on appeal.[1] The issue on appeal therefore is whether the Applicant has established extreme hardship to his qualifying relative spouse and children and if that issue is resolved in the affirmative, whether he merits a favorable exercise of discretion. Having considered all the evidence in the record, including the documentation submitted on appeal, we conclude that the claimed hardships to the Applicant's spouse and three minor children rise to the level of extreme hardship when considered both individually and cumulatively. Our decision is based on a review of the record, which includes, but is not limited to, statements from the Applicant and his spouse, medical and mental health documentation pertaining to the Applicant's son, financial and employment documentation, reports regarding the cost of childcare in Minnesota, and biographic and civil documents.

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant and 2) if the qualifying relative relocates overseas with the

[1] The Texas statute under which the Applicant was found guilty of committing a crime involving moral turpitude states, in pertinent part: "Assault (a) A person commits an offense if the person: (1) intentionally, knowingly, or recklessly causes bodily injury to another . . . ." Tex. Penal Code Ann. § 22.01 (West 2022). The caselaw is not settled on whether assault is a crime involving moral turpitude (CIMT) within the meaning of section 212(a)(2)(A)(I)(i). *Matter of Sanudo*, 23 I&N Dec. 968, 971-72 (BIA 2006) ("it has often been found that moral turpitude necessarily inheres in assault and battery offenses that are defined by reference to the infliction of bodily harm upon a person whom society views as deserving of special protection, such as a child, a domestic partner, or a peace officer"); *Matter of Berhe*, 2008 WL 4722675 (BIA 2008) (unpublished) (Texas assault on peace officer is a CIMT where the record establishes the intentional nature of the assault). *Cf. Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988) (Texas aggravated assault on a peace officer is a CIMT); *Partyka v. Att'y Gen. of U.S.*, 417 F.3d 408 (3d Cir. 2005) (New Jersey negligent assault on law enforcement officer causing bodily injury is not a CIMT).

Here, the evidence suggests that the Applicant was intoxicated when police were called to investigate whether he was committing a crime. When the police arrived, the Applicant fled, and a police officer deployed a taser which knocked him unconscious. The taser pierced the skin on his back and he cut himself when he fell, so he was taken to the hospital to treat his injuries. His actions in the hospital are the basis for the assault charge. The police account of the assault describes the Applicant as having behaved in a "combative" way at the hospital and states that he kicked a treating physician in the face. On appeal, the Applicant states that he has no recollection of the events in question, and that he did not intend to kick the doctor because he was unconscious when he was taken to the hospital. The record remains vague as to whether the Applicant possessed the necessary intent to commit the assault, and thus render it a CIMT, because it appears he may have been both inebriated and unconscious during and prior to the assault. However, because the Applicant does not contest that his conviction for assault is a CIMT, we will continue our analysis as if his conviction renders him inadmissible under section 212(a)(2)(A)(I)(i) of the Act.

applicant. Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. An applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. 9 *USCIS Policy Manual* B 4(B), https://www.uscis.gov/policymanual. In the present case, statements in the record indicate that the Applicant's spouse and their three children will remain in the United States. The Applicant must therefore establish that if he is denied admission, his qualifying relatives will experience extreme hardship upon separation.

The Applicant's spouse states that she will experience extreme emotional, and financial hardship if the Applicant is unable to reside in the United States with her. She states that she will be left to care for her three young children without the love and financial support that the Applicant currently provides. She asserts that the Applicant is an integral part of the family's life, and she needs him in order to work and manage her family's day-to-day existence. She contends that he has been a significant source of love and support to her and her three children, particularly their oldest son (currently age ten). Her oldest son is being treated for mental health problems stemming from the abandonment of his biological father, and she asserts that this child has bonded with the Applicant, who is now his father, and that losing the Applicant's presence in this child's daily life would cause him extreme emotional hardship. Were he to relocate abroad, she maintains that she would be deprived of the only person who is capable of helping her raise this child, who has displayed some problematic behavior at school and who has bonded with the Applicant. This young child would experience a second abandonment from a father figure in his life, which would be devastating to him, and to her. On appeal, the Applicant provides a psychological evaluation, from February 2020, detailing the Applicant's minor son's need for ongoing weekly therapy to develop interpersonal skills, manage his anger and emotional expression, heal from not having his biological father in his life, explore other mental health concerns, and increase support in his life. The evaluation shows that the Applicant's son needs additional support, and that the Applicant's presence will be vital to the long-term emotional well-being of this child.

In support of the emotional hardship referenced, the Applicant asserts that his wife would suffer because her children would be left without a father and trusted caretaker. Currently, the couple has alternating work schedules so that there is a constant adult presence in their children's lives. Their youngest son is currently two years old, and if the Applicant is removed from the family's home, he would require costly childcare for her to work. If the Applicant's spouse did not work, she would have no other source of income. The Applicant's absence, his spouse contends, would place her in a precarious family situation, where her young children would be potentially left unsupervised and uncared for because she works, and if she stayed home to care for them, the family would be left with no income.

Regarding financial hardship, the Applicant's spouse states that she cannot survive on her income alone because she makes modest wages at her job, and she would not be able to pay most of her household expenses. The Applicant's household expenses total $4,000 a month. Together the couple makes $4,269 a month. The estimated cost of childcare in Minnesota is $2,000 a month. The evidence presented on appeal shows that the Applicant's spouse's financial situation would be greatly adversely affected by her separation from the Applicant, and the loss of his income and presence. The

Applicant's income is essential to the family, and the Applicant's spouse details that while she was on maternity leave, the family of five relied solely on the Applicant's income. On appeal, the Applicant provides a breakdown of the family's household expenses, and their income and work schedules. Were the Applicant to relocate abroad, she states that she would not be able to manage the household's financial obligations, and she would likely end up without an income because she could not afford childcare.

We conclude that the new evidence submitted by the Applicant on appeal adequately addresses the insufficiencies identified by the Director and establishes, when considered alongside previously submitted evidence, that the Applicant's spouse will experience extreme hardship if she separates from the Applicant due to his inadmissibility. The Applicant has thus established extreme hardship to his qualifying relative spouse and three minor children for purposes of a waiver of the above-stated ground of inadmissibility.

The Director concluded that the Applicant's negative factors outweighed the positive factors in his case. In particular, the Director considered the Applicant's lack of candor during his interview (in particular, with respect to his criminal activity) to be a significant factor in denying him discretion. The Director may wish to consider the record evidence indicating that the Applicant testified at his interview through the use of an interpreter. The record reflects that the Applicant used a family member as an interpreter during the interview and that this interpreter had to be instructed by the interviewing officer to fully express what the Applicant was stating. (The officer's notes reflect the following instruction "And interpreter, please try you[r] best to interpret first person exactly what he says . . . meaning what the applicant actually said"). In any event, because the Applicant's showing of extreme hardship to his U.S. citizen spouse and three minor children now presents an additional positive factor, we will remand the matter to the Director so that a new determination of whether the Applicant now merits a favorable exercise of discretion may be conducted.

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