U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 2226614

Date: SEP. 19, 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 denied the application, finding that the Applicant was inadmissible for having been convicted of a crime involving moral turpitude (CIMT). The Director then determined that although the Applicant established extreme hardship to his lawful permanent resident mother, his conviction was for a violent or dangerous crime making him subject to a heightened discretionary standard, and the evidence did not establish extraordinary circumstances for a favorable exercise of discretion.

On appeal, the Applicant asserts that the Director erred in denying the application. The Applicant bears the burden of proof 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). Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision consistent with the following analysis.

I. LAW

Any foreign national convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a [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. A waiver is available under section 212(h)(1)(B) of the Act if the denial of admission would result in extreme hardship to an applicant's U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. If the foreign national meets the requirements for a waiver under section 212(h)(1)(A) or (B) of the Act, then he or she must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(h)(2) of the Act.

With respect to the discretionary nature of a waiver, the burden is on the Applicant 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 the 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).

However, a favorable exercise of discretion is not warranted for foreign nationals 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 an applicant "clearly demonstrates that the denial . . . would result in exceptional and extremely unusual hardship." 8 C.F.R. § 212.7(d). Even if the foreign national 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 (A.G. 2002) (providing that if the gravity of the foreign national's underlying criminal offense is grave, a showing of exceptional and extremely unusual hardship might still be insufficient to grant the immigration benefit as a matter of discretion).

II. ANALYSIS

On appeal, the Applicant does not contest his CIMT inadmissibility finding, a determination supported by the record. Moreover, because the Applicant resides overseas and is applying for an immigrant visa, DOS makes the final determination regarding his inadmissibility with respect to the visa. As a result, the Applicant requires a waiver of inadmissibility under section 212(h) of the Act. In addition, we will not disturb the Director's determination that the Applicant has shown extreme hardship to a qualifying relative, his mother. The remaining issue on appeal is whether the Applicant's CIMT crime is violent or dangerous requiring a heightened discretionary finding for a waiver under section 212(h) of the Act.[1]

A. Immigration History

The Applicant applied with the United States Department of State (DOS) for an immigrant visa as the child of a principal visa applicant (his mother). During the processing of his visa application DOS determined that in 2011 he had been arrested and convicted in Vietnam for "intentionally causing injury" under Article 104 of the Vietnamese Criminal Law of 1999. In February 2019, DOS refused to issue his immigrant visa determining that he was inadmissible for a CIMT based on his 2011 conviction which resulted in a five and a half-year prison sentence. His mother and father also applied for immigrant visas in 2019 which were approved, and they were admitted to the United States as lawful permanent residents in March 2019.

B. Violent or Dangerous Crime

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); *see also Cisneros v. Lynch*, 834 F.3d 857, 865 (7th Cir. 2016); *Matter of Dominguez-Rodriguez*, 26 I&N Dec. 408, 413 n.9 (BIA 2014).

[1] While we may not discuss every document submitted, we have reviewed and considered each one.

On appeal, the Applicant maintains that his conviction did not involve a violent or dangerous crime, pointing to his court records in Vietnam. He asserts that the court records show that the Applicant was "involved in a fight between teenagers," while also acknowledging that he injured [T-] in the incident. He notes that T- was the first person "to enter the fight with a stick of wood," that T- "hit and injured [the Applicant] first with the stick, causing [him] to counterattack." The Applicant contends that "at worst, [his actions were] a counterattack in a mutual combat; at best, [they were] an act of self-defense."

We have carefully considered the Applicant's assertions, statements from others, and the court records provided in support of the application but determine the Applicant's reliance on this documentation is misplaced. The court records describe the altercation between the Applicant and the other parties involved, as follows:

> The defendants [including the Applicant] after drinking, [met] and provoked [D-] leading to an assault on both sides. After seeing [D-] being assaulted, [T-] came to help using a wooden stick, a dangerous object, with the purpose of helping his older brother [D-]. After being hit by [T-], [another convicted defendant, B-] and [the Applicant] directly assaulted [T-] causing 41% of injuries.
>
> Considering when committing the crime, although only [the Applicant] used a dangerous weapon, [B-] was actively involved with [the Applicant] in causing injuries to [T-], so their behavior [which] was tried by the court with the crime of intentionally causing injury as prescribed in Clause 3, Article 104 of the Penal Code, is grounded.

The court records also state that during the altercation the Applicant and B- "proceeded to hold [T-] to the ground and hit [T-] in the face and chest multiple times; [the Applicant] picked up a stick with a length of one meter and hit [T-] in the head two times resulting in injuries."

The words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not defined in 8 C.F.R. § 212.7(d), and we are aware of no precedent decision or other authority containing a definition of these terms as used in the regulation. We therefore interpret the phrase "violent or dangerous crimes" in accordance with the plain or common meaning of its terms. Black's Law Dictionary (11th ed. 2019), 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."

As discussed, the Applicant contends on appeal that while he injured T-, his actions were a "counterattack" intended to defend himself. However, the submitted court records indicate that the Applicant and B- were the aggressors in the altercation: while intoxicated, they instigated a conflict with D-, which caused T- to seek to defend D-, his older brother. Moreover, the Applicant and B- held T- on the ground beating him in the face and chest until the Applicant picked up a large stick and struck him twice in the head with it. We conclude that the Applicant's assault of a person in this manner was violent (for instance, characterized by the use of strong physical force), and is dangerous (perilous, hazardous, or unsafe, and likely to cause serious bodily harm.) We therefore affirm the

Director's finding that the Applicant committed a violent or dangerous crime, and determine the Applicant is subject to the heightened discretionary standard of 8 C.F.R. § 212.7(d).

C. Discretion

When a foreign national has been convicted of a 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 Applicant does not assert that his case involves national security or foreign policy considerations, therefore we must determine if he has clearly demonstrated that the denial of his waiver application would result in exceptional and extremely unusual hardship to himself, a qualifying relative, or qualifying relatives.

In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board of Immigration Appeals (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." The Board stated that 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.

The Director determined that the evidence submitted was sufficient to establish extreme hardship to the Applicant's mother, discussing that her medical health conditions preclude her ability to work and financially contribute to her household. He also acknowledged that the mother was unable to travel to Vietnam to visit the Applicant due to her health limitations and lack of ability to pay the costs of such travel. He concluded that while the denial of the waiver application would adversely impact the Applicant and his family, the resulting hardships did not encompass exceptional or extremely unusual hardship compared with the hardships many others typically face.

The Director did not discuss any hardships to the Applicant's father, other than noting that he was the sole wage earner for the household. Notably, he concluded in the denial that the Applicant had not provided evidence showing his own hardships should the application remain denied. However, the Form I-601 submission and response to a request for evidence contains claims and evidence of the worsening mental and physical health of the Applicant's mother due to his visa refusal; as well as emotional hardship to the Applicant's father; and emotional hardship to the Applicant himself if he continues to be separated from his parents.

For instance, the Applicant's mother explains in her letters that she and her spouse have three children, the Applicant and his two older sisters, who reside in Vietnam. Their daughters were unable to accompany them when they applied to immigrate to the United States; only the Applicant was eligible to apply under CSPA review,[2] but he was inadmissible at the last minute due to his CIMT inadmissibility finding. She indicates that her spouse filed Form I-130 immigrant relative petitions for their daughters shortly after they immigrated, in the hopes that they can be reunited with them in a

[2] Congress enacted the Child Status Protection Act (CSPA) in 2002, Pub. L. No. 107-208, 116 Stat. 927 (Aug. 6, 2002) to provide for continued classification of certain aliens as children in cases where the children "age out" - turn 21 years of age - while awaiting immigration processing. In other words, the law was enacted to prevent children from "aging-out" due to USCIS delays. *See* 7 USCIS Policy Manual A.7(A), https://www.uscis.gov/policymanual.

few years, noting "if the [Applicant] is not granted a visa, he would have no chance to reunite with us for family reunion. [He] would have to live alone in Vietnam; our desire for family reunion, as a result would be totally vanished, maybe forever" . . . . [e]very day, we are saddened and concerned by the prospect of not having him by our side." Though the record does not contain a statement from the Applicant discussing this hardship as it relates to himself or his father, the evidence suggests that it is likely that the Applicant will remain alone in Vietnam and will henceforth be unable to see his parents, which may collectively cause hardships to them all.

The Applicant's mother also emphasized that she was 59 and her husband was 62 at the time the waiver application was filed; they are now aged 62 and 65, respectively. She discussed the prospective financial hardships they will endure relating to their advancing age, noting that she is already unable to work due to her health conditions and that her husband's advancing age may soon prevent him from performing his manual labor job in order to financially support them. She asserts that if the waiver application is approved, then the Applicant could be reunited with them, relieving financial pressures and providing on-going care for their well-being as they age.

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 Director did not appear to address these aspects of the aforementioned hardships in evaluating whether the Applicant has shown exceptional and extremely unusual hardship to himself, his mother, and his father; either individually or when taken together as a family unit. Thus, we are remanding the matter for the Director to review all hardships presented. The Director may request any additional evidence considered pertinent to the new determination. If the Director then finds that the Applicant has submitted sufficient evidence of exceptional or extremely unusual hardship, then the Director shall determine whether the Applicant merits a favorable exercise of discretion.

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