U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29410885

Date: DEC. 19, 2023

Appeal of Nebraska Service Center Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Venezuela, currently residing in Colombia, has applied for an immigrant visa and seeks a waiver of inadmissibility for having been convicted of a crime involving moral turpitude (CIMT) 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 this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Nebraska Service Center (Director) denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant did not establish extreme hardship to his qualifying relative. The Applicant appealed and on remand, the Director denied the waiver application determining the Applicant was subject to a heightened discretionary standard because he was convicted of a violent or dangerous crime and did not merit a favorable exercise of discretion. In the instant appeal, the Applicant contends the Director erred in determining that his spouse would not suffer exceptional and extremely unusual hardship.

In these proceedings the Applicant has the burden to establish eligibility for the requested benefit. 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. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A)(i) of the Act. A discretionary waiver is available if 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 foreign national has been rehabilitated, or if denial of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(A), (B) of the Act. Finally, if a foreign national demonstrates their eligibility under section 212(h)(1) of the Act, USCIS must then decide whether to

exercise its discretion favorably and consent to the foreign national'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 Applicant 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 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 depending on the gravity of the foreign national's 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 determined that the Applicant was inadmissible under section 212(a)(2)(A)(i) of the Act because he was convicted of CIMTs, including a 2001 conviction for battery with serious bodily injury in violation of section 243(d) of the California Penal Code (Cal. Penal Code) and a 2008 conviction for grand theft in violation of section 487(a) of the Cal. Penal Code. On remand, the Director determined the battery conviction was violent or dangerous in nature and that because the Applicant did not establish that denial of the waiver application would cause exceptional and extremely unusual hardship to his spouse, the Applicant was not eligible for a favorable exercise of discretion under 8 C.F.R. § 212.7(d).

The record reflects that in addition to the CIMTs, the Applicant also has a 2005 conviction for carrying a concealed weapon in violation of section 12025(a) of the Cal. Penal Code and a 2010 conviction for possessing ammunition or a firearm by a person ineligible to do so, a violation of section 12316(b) of the Cal. Penal Code. The Applicant was granted voluntary departure to Venezuela by an immigration judge in [redacted] 2011 and subsequently departed the United States. In [redacted] 2011, the Applicant and his spouse married in Venezuela. His spouse resides in the United States with their U.S. citizen daughter and the Applicant's stepson.

In support of the hardship claims are statements from the Applicant, his spouse, stepson, daughter, and a roommate with whom his spouse lives, a social security statement, and photographs of the Applicant and his family. The Applicant does not contest that he is inadmissible under section 212(a)(2)(A) of the Act as an alien convicted of CIMTs, nor does he dispute that his conviction was for a dangerous or violent crime. The Applicant does not assert that his case involves national security or foreign policy considerations. The only issue on appeal is whether the Applicant has established that he merits a waiver under section 212(h) of the Act in the exercise of discretion. We have reviewed the entire record, including the additional evidence submitted on appeal and conclude that the Applicant has not

established the denial of the waiver application would result in exceptional and extremely unusual hardship.

In the statements submitted on appeal, the Applicant and his family describe how the Applicant's absence since 2011 is causing hardship to them. In 2020, his stepson became paralyzed from the chest down and his spouse provides full-time care to her son. She bathes, clothes, feeds, and repositions him so that he does not get bed sores. He requires care from two in the morning until midnight. His spouse is also raising their teenage daughter, and, on the weekends, she cares for her granddaughter who suffers from cerebral palsy. We acknowledge the spouse's significant caretaking duties and agree she would suffer hardship if the Applicant were not admitted to the United States. However, the record does not establish how the Applicant would assist his spouse in caring for the family or specify how he would alleviate his wife's ongoing caretaking duties. The Applicant did not provide sufficient documentary evidence that continued separation would result in the worsening of his family's struggles such that his spouse would suffer exceptional and extremely unusual hardship. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001) (explaining 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 Applicant previously submitted his spouse's medical record indicating she was diagnosed with major depression. The record indicates she declined medicine to treat her depression, and the Applicant has not submitted evidence that his spouse is currently undergoing treatment. Without more, we are not able to assess the impact the Applicant's separation has on his spouse with respect to her depression. The statements from the Applicant's daughter and stepson explain they are experiencing hardships because of the separation from the Applicant. His daughter describes missing her father for many years and his stepson explains that he needs the Applicant's assistance in his own care and to support his mother. We recognize the hardships to the Applicant's family because of the separation, but the record on appeal lacks sufficient documentation to establish that the hardships would be further aggravated if the separation were to continue. The Applicant's spouse has been raising their daughter and caring for his stepson without the Applicant's support for several years. Loss of companionship and emotional support are expected results of separation from a loved one and the statements do not indicate that the Applicant's family would experience emotional hardships that rise to the level of exceptional and unusual hardship. As noted, the Applicant must establish that the claimed hardship, individually or cumulatively, would be *substantially beyond* the ordinary hardship that would be expected, in his case, due to continuing separation. While certain uncommon hardships due to removal or inadmissibility may amount to extreme hardship, these types of hardship would not meet the significantly higher exceptional and extremely unusual hardship standard. *Matter of Andazola-Rivas*, 23 I&N Dec. 319 (BIA 2002) (discussing the significantly higher hardship standard in the context of cancellation of removal).

Even if the Applicant were able to establish the existence of extraordinary circumstances pursuant to 8 C.F.R. section 212.7(d), that alone would not be enough to warrant a favorable exercise of discretion. *See Matter of Jean*, 23 I&N Dec. at 373. Over the course of ten years, the Applicant was convicted of four crimes, two of which are CIMTs and one of which is a dangerous or violent crime, an important consideration in the discretionary nature of the waiver application. The Applicant states that he regrets his past conduct, takes full responsibility for his actions, considers himself rehabilitated, and will no longer violate the law. He does not specify how or why he considers himself to be rehabilitated or

submit documentation that he has undergone any sort of treatment that could evidence his efforts toward rehabilitation. Given the number and serious nature of the Applicant's convictions and the lack of supporting documentation to demonstrate rehabilitation, the Applicant has not met his burden to establish that he merits a favorable exercise of discretion.

III. CONCLUSION

Considering all hardships in the aggregate, we acknowledge the Applicant and his family would experience some level of hardship if his waiver application were not granted. However, these hardships do not rise to a level that can be considered exceptional and extremely unusual as they are not substantially beyond the ordinary hardships that would be expected upon removal of a family member. Therefore, the Applicant has not clearly demonstrated he merits a favorable exercise of discretion, and the waiver application will remain denied.

ORDER: The appeal is dismissed.