



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

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

In Re: 20845565

Date: JAN. 17, 2023

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Peru currently residing in Peru, 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).

The Director of the Nebraska Service Center denied the waiver application, concluding that the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The Director additionally determined that the Applicant committed a violent or dangerous crime as contemplated in 8 C.F.R. § 212.7(d) and, as such, he must be held to a heightened discretionary standard. The Director then determined that the Applicant did not meet that standard.

The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant contends that the Director erred in deciding that the Applicant's conviction constituted a violent or dangerous crime and in finding that his parents would not suffer exceptional and extremely unusual hardship.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), provides that any 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.

Individuals found inadmissible under section 212(a)(2)(A)(i)(I) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) 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. Alternatively, a waiver is available for individuals who demonstrate that denial of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident (LPR) spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act.

With respect to the discretionary nature of a waiver, when a noncitizen 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 noncitizen has established “exceptional and extremely unusual hardship” if the benefit is denied, or situations in which overriding national security or foreign policy considerations exist. Exceptional and extremely unusual hardship “must be ‘substantially’ beyond the ordinary hardship that would be expected when a close family member leaves this country.” *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001). Even if an applicant can demonstrate the existence of these extraordinary circumstances, depending on the gravity of the applicant’s offense, consent to the applicant’s admission, as a matter of discretion, may still be denied. 8 C.F.R. § 212.7(d).

II. ANALYSIS

The record reflects that in 2013, the Applicant was convicted in the Fourteenth Criminal Court in Peru, of the crime against Sexual Freedom – Indecent Assault that was committed in 2005 in violation of section 176 of the Peruvian Criminal Code. The Applicant was sentenced to four years of imprisonment and ordered to pay restitution to the victim and complete therapeutic, medical, and psychological treatments.

The Director determined that the Applicant’s conviction constituted a crime involving moral turpitude. On appeal, the Applicant does not contest that his conviction constituted a crime involving moral turpitude; however, he contends that it is not for a violent or dangerous crime as the Director found. The Applicant further contends that even if he is subject to a heightened discretionary standard, his waiver application should be approved because his U.S. citizen parents would experience exceptional and extremely unusual hardship if he is unable to enter the United States. The Applicant also contends that the evidence showed that the activities for which he was convicted of occurred more than 15 years ago and that he has demonstrated rehabilitation.

The Director determined that the Applicant’s conviction under section 176 of the Peruvian Criminal Code constituted a violent or dangerous crime as set forth in 8 C.F.R. § 212.7(d), and the Applicant was, therefore, subject to a heightened discretionary standard. However, the Director offered no analysis of the factors that were considered in reaching the conclusion that the Applicant’s indecent sexual assault conviction in Peru was for a violent or dangerous crime that warrants the application of a heightened discretionary standard. *See* 8 C.F.R. § 103.3(a)(1)(i) (requiring in writing specific reasons for denial of an application or petition); *see also Matter of Saelee*, 22 I&N Dec. 1258, 1262, 1286 (BIA 2000) (citing *Matter of M-P-*, 20 I&N Dec. 786, 787-88 (BIA 1994) (finding that a decision must fully explain the reasons for denying a filing to allow the respondent a meaningful opportunity to challenge the determination on appeal). In addition, although the Director acknowledged that more than 15 years had passed since the date of the Applicant’s criminal activities, it is unclear whether the

Director determined that the Applicant did not meet the rehabilitation waiver requirements. Therefore, we remand this matter for the Director to determine whether the evidence supports the Applicant's contention that he met the statutory requirements for a rehabilitation waiver and for a more thorough analysis of whether the Applicant's conviction constitutes a violent or dangerous crime. *See* section 212(h)(1)(A) of the Act.

Furthermore, even if the Applicant does not meet the statutory requirements for a rehabilitation waiver, the Director should evaluate the record and determine whether that the Applicant established eligibility for a waiver on the basis of extreme hardship to his U.S. citizen parents. Section 212(h)(1)(B) of the Act. In the matter at hand, despite acknowledging that a demonstration of extreme hardship is one of two ways of attaining a waiver under section 212(h) of the Act, the Director conflated the heightened discretionary of exceptional and extremely unusual hardship with the issue of statutory eligibility under section 212(h)(1)(B) of the Act. In this case, the Applicant's parents are qualifying relatives who would be considered in making the determination regarding his statutory eligibility; his parents would also be considered under the heightened discretionary standard of "exceptional and extremely unusual hardship," which is part of a discretionary analysis performed only if the Applicant establishes that he met the statutory eligibility requirement and was convicted of a crime that is deemed violent or dangerous.

III. CONCLUSION

In light of deficiencies described above, we hereby withdraw the Director's decision and remand the matter for further consideration of the Applicant's eligibility for a waiver. If a determination is made that the Applicant is not eligible for a waiver, the Director shall issue a new decision containing a more comprehensive and proper analysis of the evidence and an explanation of the basis for denial of the waiver application.

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