U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25887300

Date: JUN 20, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Afghanistan, has applied for an immigrant visa, which requires him to show, inter alia, that he is admissible to the United States. Section 245(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(a)(2). He was found to be inadmissible under section 212(a)(2)(A)(i)(I), (II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), (II), for having been convicted of a crime involving moral turpitude and a controlled substance violation, and he sought a discretionary waiver of inadmissibility under section 212(h)(1)(A), (B) of the Act.

In a March 2022 decision, the Director of the Nebraska Service Center determined that the Applicant is eligible for a waiver under section 212(h)(1)(A) and 212(h)(1)(B) of the Act, concluding that the record established that he sought his immigrant visa more than 15 years after the offenses in question, he has since been rehabilitated, and his qualifying relatives, his U.S. citizens mother and daughter, would suffer extreme hardship, if the Applicant is denied admission. *Id.* However, because the Applicant's 2004 conviction for stalking constituted a violent or dangerous crime, he was required to show "extraordinary circumstances" pursuant to 8 C.F.R. § 212.7(d), in order to warrant a waiver of inadmissibility as a matter of discretion. The Director then determined that the Applicant also met this heightened standard by clearly demonstrating that the denial of the waiver request would result in "exceptional and extremely unusual hardship." *Id.* However, the Director ultimately denied the waiver application as a matter of discretion, concluding that the Applicant did not show that his considerable equities, including exceptional and extremely unusual hardship to him and his mother and daughter as determined by the Director and required under 8 C.F.R. § 212.7(d), outweighed the significant negative factors present in the record as a whole. Section 212(h)(2) of the Act. On appeal, we agreed and affirmed the Director's discretionary denial of the waiver request, upon de novo review. The instant motion to reopen and reconsider followed. Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the prior decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that meets these requirements.

II. ANALYSIS

A. Motion to Reconsider

In our previous decision, incorporated here, we considered the entirety of the record and concluded that the Applicant did not show that he merited a waiver as a matter of discretion. We specifically acknowledged the Applicant's significant equities, including his extensive family ties in the United States, many of whom are U.S. citizens, and extreme hardship to his qualifying relatives (under section 212(h)(1)(B) of the Act) as well as exceptional and extremely unusual hardship to him and his family members (pursuant to 8 C.F.R. § 212.7(d)) if he is denied admission. We also considered the fact that he came to this country as a refugee in 1990 and resided here as a lawful permanent resident for about 16 years until his removal in 2006 when he was around 35 years of age, and the lack of evidence of additional criminal offenses after his removal from the United States. We further acknowledged the Applicant's work history in the United States and the numerous character letters explaining that most of his criminal convictions occurred when he was going through difficult times. Additionally, we addressed the conditions in Afghanistan from where the Applicant and his mother obtained refugee status in 1990 and also considered potential health and safety risk for him and his family due to the worsening conditions in the country now controlled by the Taliban, his significant family ties here, as well as the COVID-19 pandemic. However, considering the record as a whole, we held that the positive equities did not outweigh the substantial negative considerations, including the nature and underlying circumstances of the Applicant's inadmissibility grounds, his many criminal convictions and their seriousness, as well as other evidence of undesirability as a permanent resident of this country. *Matter of Mendez-Moralez*, 21 I&N Dec. at 301.

In specifically identifying the numerous adverse factors, we first noted that the underlying criminal convictions for the Applicant's inadmissibility grounds involved a crime involving moral turpitude and a controlled substance violation under the Act. Next, we considered the Applicant's extensive criminal history comprising six convictions from 1992 and 2005, indicating his repeated disregard for law while living here. Many of these convictions involved violence, dangerous behavior, and physical force towards the victims (the Applicant's uncle and his ex- spouse), for which he received multiple imprisonment sentences, ultimately resulting in his removal in 2006. We specifically considered, for instance, the Applicant's 1992 assault and battery conviction of a lesser charge to which he pled guilty and received a six-month prison term, and discussed at length the underlying circumstances of this conviction, including the original charge of felony maiming as stated in the indictment and evidence of his violent maliciousness towards his uncle who suffered injuries as a result, as well as the Applicant's statement indicating escalation of his own actions leading up to the confrontation. We also noted that in 1996, at age 25, he was charged, tried, and convicted of a second assault and battery offense, this time involving his then spouse, resulting in a 60-day (suspended) jail sentence; and, yet another assault and battery conviction in 2004 at around age 33, again involving his former spouse, evidencing a propensity for violence towards her and continued disregard for law.

In addition to the three assault and battery convictions involving the Applicant's family members, he was convicted of stalking his ex-spouse in 2004, received a 60-day (suspended) jail sentence, and prohibited by a court order from contacting the victim, her family, or household members. In 2005, he was yet again convicted of violating a stalking protection order entered for his ex-spouse's safety,

resulting in a 365-day prison term (185 days suspended with conditions). We further noted that he also has a 2004 conviction for attempted possession of marijuana, for which he received a 120-day (suspended) jail sentence and one year of probation; and while he was still in immigration custody during his removal proceedings, the Immigration Judge declined the Applicant's change of custody status request because he was determined to be "potential danger to community." Considering the record in its entirety, including the grave and repetitive nature of the Applicant's long criminal history, for which he did not appear to show full acceptance of responsibilities, we ultimately concluded that he did not demonstrate that the evidence of his equities outweighed the substantial adverse factors.

On motion, as an initial matter, the Applicant first challenges the scope of our discretionary review of the negative factors. Specifically, he asserts, as he did on appeal in alleging Director error, that we also failed to limit our review of the unfavorable factors to his 2004 stalking offense and its underlying circumstances that triggered the heightened discretionary standard under 8 C.F.R. § 212.7(d). But, in our prior decision, we clearly explained that determining whether a waiver request warrants a favorable exercise of discretion requires consideration of all the discretionary factors present in the record as a whole. *See Matter of C-A-S-D-*, 27 I&N Dec. at 699, 701 (stating that even if a noncitizen establishes the exceptional and extremely unusual hardship to show "extraordinary circumstances" under the heightened discretionary standard, a waiver may still be denied as a matter of discretion upon review of all discretionary factors, and holding that the noncitizen's "extensive criminal history," *including* the crime necessitating the heightened standard, constituted a "substantial adverse factor"); *see also id.* at 694, 696-97 (explaining the intent behind 8 C.F.R. § 212.7(d)); *Matter of Mendez-Moralez*, 21 I&N Dec. at 301 (stating that consideration of adverse discretionary factors depends on the nature and circumstances of not only the underlying inadmissibility but also on the presence of *any additional adverse matter*, including *a criminal record* and *the presence of other evidence* of bad character or undesirability as a permanent resident, and requiring review of *the record as a whole*). The Applicant does not cite pertinent authority restricting our review of the negative factors merely to the underlying violent or dangerous crime in the context of the heighted discretionary standard.

The Applicant further alleges that we otherwise improperly balanced the discretionary factors. For instance, he argues that we erred in using his inadmissibility grounds as negative factors. However, the pertinent precedent decision clearly states that the nature and underlying circumstances of the inadmissibility ground at issue must be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. at 301. Contrary to the Applicant's assertion, we did not merely consider his inadmissibility grounds alone as separate negative factors, but rather, we assessed their nature and underlying circumstances by contextually considering the related criminal offenses. Even if the inadmissibility grounds were unrelated to any of his convictions, we were not precluded from considering them as additional violations of immigration laws or "other evidence" of adverse factors. *Id.* at 301.

As for the negative factors pertaining to the numerous convictions and their underlying circumstances, the Applicant asserts that our previous decision contains several errors warranting reconsideration. Specifically, he contends that we failed to favorably consider his claimed mitigating circumstances surrounding his criminal offenses as indicated in his own statements and statements from his friends and family members. He also asserts that we erred by heavily relying on his past convictions, which occurred many years ago when he was younger, without properly considering the evidence of his remorse and the absence of other criminal record since his removal from the United States in 2006. In support of these assertions, he largely relies on the same numerous written statements we previously

considered on appeal. Although he also submits for the first time on motion various updated statements and a new psychological evaluation in support of these assertions of error, we note at the outset that we do not consider new evidence on a motion to reconsider. 8 C.F.R. § 103.5(a)(3).

In our previous decision, we considered the above concerns and the related evidence then before us. We acknowledged the fact that he came to this country in 1990 as a 19-year-old refugee as well as the character letters from his friends and family members explaining that his convictions occurred mostly during challenging times, including his divorce and child custody proceedings. We also considered inter alia, that his convictions occurred between 1992 and 2005, many years before he sought a waiver, and that the record lacked evidence of other criminal offenses since his removal from this country. However, as noted, we declined to exercise discretion in the Applicant's favor, given the grave nature of his extensive criminal history, for which he did not appear to fully express remorse, particularly as to his repeated offenses involving his ex-spouse. *See, e.g., Matter of Mendez-Moralez*, 21 I&N Dec. at 303-304, 313, n.11 (noting that even a single egregious adverse factor may overwhelm any existing equities). While he was relatively of young age at the time of the 1992 assault and battery conviction, as stated, the underlying context of this crime nonetheless indicates violence, malice, and intent to cause serious injury. We also disagree with the Applicant that considering the underlying indictment and the original felony maiming charge in addressing the 1992 conviction was error. *Id.* at 303, n.1 (noting that while going beyond the conviction record to assess the guilt or innocence of the noncitizen is not permitted, "it is proper to look to probative evidence outside the record of conviction in inquiring as to the circumstances surrounding the commission of the crime in order to determine whether a favorable exercise of discretion is warranted") (citation omitted). Further, he was 25 years old at the time of his 1996 assault and battery conviction involving his ex-spouse, and approximately 33 years old in 2004 when he was convicted of the remaining criminal offenses, including the assault and battery and stalking related offenses again involving his ex-spouse. Although the criminal offenses occurred many years ago, as we noted in our previous decision, they occurred repeatedly and cover most of his life in this country as a permanent resident from 1992 to 2005, and many of his convictions involved violence and dangerous behavior and at least one offense constituted a violent or dangerous crime for immigration purposes, ultimately resulting in his removal from this country. *See, e.g., Matter of C-A-S-D-*, 27 I&N Dec. at 699, 701 (holding that "convictions for violent and dangerous crimes, which represent an escalation of [the noncitizen's] criminal activity over the years, present significant adverse discretionary factors"). The Applicant's motion to reconsider does not demonstrate that we incorrectly applied law or policy in considering these factors.

Lastly, contrary to the Applicant's arguments, we did not overlook his claimed countervailing circumstances surrounding his convictions. He reiterates that he wanted to call the police and took responsibility for the 1992 assault and battery offense by ultimately turning himself in, and he has since reconciled with his uncle who even provided a statement as to the confrontation. The Applicant also asserts that we overlooked his claim that his offenses involving his ex-spouse occurred due to their mutually conflictual marriage and out of his desire to contact his children, and he continues to emphasize that he generally made bad choices due to his youthful age, poor judgment, anger issues, and troubled marriage. However, in our decision on appeal we considered those arguments and related evidence, including the Applicant's mitigatory explanations and statements of remorse after the fact.

In conclusion, the Applicant has not demonstrated that we erred in law or policy in determining that based on the discretionary factors present in the record as a whole, he did not meet his burden of establishing that his equities outweigh the substantial adverse factors.

B. Motion to Reopen

Turning to the Applicant's motion to reopen, he contends that new facts based on documentary evidence establishes that his positive considerations now outweigh the negative factors. Specifically, he submits updated statements from various individuals attesting to his character, remorsefulness, and extenuating factors that may have contributed to his offenses involving his ex-spouse and uncle. These documents include a statement from the uncle reiterating the circumstances preceding the 1992 assault and battery conviction and stating that they have since reconciled; statements from the Applicant's two adult children and his sister indicating that he was in a tumultuous, adversarial marriage with his ex-spouse who was mutually abusive and tried to turn their children against him; and three character letters from other individuals, including from a cousin and a distant relative attesting to his good character. The Applicant also submits a psychological report indicating that he is at a low risk of recidivism and thus unlikely to commit similar crimes in the United States, as well as updated background country conditions reports on the deteriorating conditions in Afghanistan.

Although we acknowledge that the Applicant has expressed remorse as to his criminal convictions, his new documents still do not sufficiently show that he has taken full responsibility for his offenses. While he admits his wrongdoing and expresses regret, he continues to highlight other factors he claims contributed to his violent offenses, including the uncle's provocation and the ex-spouse's mutually abusive behavior, despite the fact that he was found guilty and convicted of each crime due to his own actions. *See Matter of Mendez-Moralez*, 21 I&N Dec. at 304 (noting that while "[t]aking responsibility and showing remorse for one's criminal behavior does constitute some evidence of rehabilitation," agencies do not go beyond the record of conviction to determine the guilt or innocence of a noncitizen). Moreover, the claimed extenuating factors do not diminish the gravity of the Applicant's repeated violence towards his ex-spouse, starting in 1996, then multiple times in 2004 and 2005, ultimately resulting in his removal from this country, even if he acted, as he claims, out of his desire to contact his children and he was arrested without further incident. Further, the record of convictions and the underlying official documents do not independently corroborate what favorable mitigating factors, if any, were taken into consideration for the Applicant's convictions. *Id.* at 301 (stating that "as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence"). Although the psychologist's report indicates that the Applicant, who is now 52 years old and has been outside this country since 2006, is at a low risk of recidivism, this report was prepared at his request essentially based on the same documents already contained in this record and it does not otherwise overcome the evidentiary deficiency as to genuine remorsefulness.

Finally, the updated country reports also do not demonstrate that the conditions in Afghanistan have qualitatively deteriorated since when we dismissed the appeal in September 2022 and acknowledged the Applicant's and his family's potential difficulties and safety risk due to the Taliban controlled government as well as the COVID-19 pandemic. While he continues to fear living in Afghanistan due to his ties to the United States, he has been residing there since his removal, and the new country reports and the updated statements do not establish individualized risk to his safety. Therefore, even when considering all the new documents on motion, most of which are cumulative in nature, if not

duplicative, the Applicant has not shown that his overall favorable factors, including the humanitarian concerns, now outweigh the negative considerations, such that reopening would be warranted.

ORDER: The motion to reconsider is dismissed.

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