U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26159256

Date: JUN. 15, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of Mexico currently residing in Mexico, has applied for an immigrant visa. A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for unlawful presence under section 212(a)(9)(B) of the Act and a crime involving moral turpitude under section 212(a)(2)(A) of the Act and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v); *see also* section 212(h), 8 U.S.C. § 1182(h) of the Act. 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. Section 212(h)(1)(B) of the Act.

The Director of the Nebraska Service Center acknowledged that the Applicant's qualifying relative, his U.S. citizen spouse, would experience extreme hardship upon separation for purposes of the section 212(a)(9)(B)(v) of the Act waiver for unlawful presence and the section 212(h) of the Act waiver of certain criminal inadmissibility grounds. However, the Director nonetheless denied the waiver application, concluding that the Applicant's criminal conviction giving rise to his inadmissibility under section 212(a)(2)(A) of the Act was for a violent or dangerous crime, thus subjecting him to the heightened discretionary standard set forth in 8 C.F.R. § 212.7(d). The Director concluded that the Applicant did not meet this heightened standard and denied the waiver application as a matter of discretion. The matter is now before us on appeal. On appeal, the Applicant submits a brief and asserts that he is eligible for the benefit sought. 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 dismiss the appeal.

Section 212(a)(2)(A) of the Act 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) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Where the activities resulting in inadmissibility occurred more than 15 years before the date of the application, a waiver is available 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. Section 212(h)(1)(A) of the Act. A waiver is also 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.

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, most relevantly, established "exceptional and extremely unusual hardship" if the benefit is denied. However, depending on the gravity of the applicant's offense, a demonstration of such extraordinary circumstances may still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act. *Id.*

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). The words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not defined in 8 C.F.R. § 212.7(d), and no precedent decision or other authority contains 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."

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).

The record shows that the Applicant was convicted in August 2009 for the offense of stalking in violation of title 18 section 2709.1(a)(2) of the Pennsylvania Consolidated Statutes (Pa. Cons. Stat.). According to court documents, the charge was described as "stalking – repeatedly communicating to cause fear." At the time of the Applicant's conviction, 18 Pa. Cons. Stat. § 2709.1(a)(2) provided, in pertinent part, that a person commits the crime of stalking when the person engages in a course of conduct or repeatedly communicates to another person under circumstances which demonstrate or communicate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.

As stated above, the Director determined that the Applicant had demonstrated eligibility for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act. Nevertheless, the Director denied the waiver application, finding that the Applicant committed a violent or dangerous crime as contemplated in 8 C.F.R. § 212.7(d) and, although his U.S. citizen spouse demonstrated that she would experience extreme hardship upon separation, the Applicant did not meet the heightened discretionary standard of exceptional and extremely unusual hardship. On appeal, the Applicant contests the Director's finding that his conviction is for a violent or dangerous crime which subjects him to a heightened

discretionary standard. The Applicant further contends that even if the heightened discretionary standard applies in his case, the evidence in the record demonstrates that he meets the exceptional and extremely unusual hardship standard and reiterates the medical, financial, and psychological hardship previously presented.

Upon de novo review, we adopt and affirm the Director's decision with the notes below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS,* 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS,* 87 F3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case.")

The Applicant argues on appeal that his conviction for stalking under 18 Pa. Cons. Stat. § 2709.1(a)(2) is overbroad relative to the definition of a crime of stalking because it can involve intent to cause emotional distress, not just place a person in reasonable fear of bodily injury. He further argues that the Director did not engage in a statutory assessment, either by categorical or modified approach, to determine whether 18 Pa. Cons. Stat. § 2709.1(a)(2) falls within the definition of a crime of violence as defined by 18 U.S.C. § 16(a). Here, though, we are not determining whether the Applicant's conviction meets the generic, federal definition of a "crime of violence," but whether it is a violent or dangerous crime under 8 C.F.R. § 212.7(d). This is a discretionary determination, and as such, we may review the statutory elements of the crime and the nature of the underlying offense. *Torres-Valdivias v. Lynch,* 788 F.3d at 1152. Although the Applicant explained in his statement that the victim was a former girlfriend who was making false accusations against him, and indicated that he did not commit the offense of which he was convicted and only plead guilty at the suggestion of the judge, the record does not contain an incident report or other narrative describing the circumstances surrounding his arrest. Nevertheless, the Applicant was convicted of stalking and we "cannot go behind the judicial record to determine the guilt or innocence of the [Applicant]." *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (citing *Matter of Fortis*, 14 I&N Dec. 576, 577 (BIA 1974)). The Applicant's 2009 conviction for stalking was described in court records as "stalking – repeatedly communicating to cause fear" and suggests that he engaged in multiple instances of conduct that caused the victim to experience reasonable fear of bodily injury and that he intended to cause such fear. The plain meaning of the Applicant's ultimate conviction of "stalking – repeatedly communicating to cause fear" connotes by its nature that the Applicant's conduct involved violence and danger and, accordingly, we agree with the Director's determination that the Applicant must therefore establish extraordinary circumstances for a favorable exercise of discretion.

The Applicant next asserts that, contrary to the Director's determination, he and his U.S. citizen spouse would experience exceptional and extremely unusual hardship if he is denied admission. In support of this assertion, he references documentation previously reviewed and considered by the Director in rendering the decision to deny the application. The Applicant does not submit additional documentation on appeal to address the deficiencies raised by the Director with respect to exceptional and extremely unusual hardship or otherwise support his assertions. Accordingly, we do not upset the Director's determination that the Applicant has not met the exceptional and extremely unusual hardship standard and, accordingly, does not warrant approval of his application in the exercise of discretion.

The Applicant has been found inadmissible for a crime of moral turpitude that is also a violent and dangerous crime, and he has not demonstrated extraordinary circumstances that warrant a favorable exercise of discretion. The Applicant is consequently ineligible for a waiver of his inadmissibility under section 212(h) of the Act.

ORDER: The appeal is dismissed.