U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17929554

Date: FEB. 01, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, who has requested an immigrant visa abroad, was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), based on a conviction for a crime involving moral turpitude (CIMT). He seeks a waiver of inadmissibility under section 212(h) of the Act.

The Director of the Nebraska Service Center denied the application, concluding that the Applicant was inadmissible due to his 2011 conviction in the Dominican Republic for voluntary infliction of harm or injury to another person, which the Director found to be a CIMT. The Director further determined that this offense was a violent or dangerous crime, and that the evidence was insufficient to establish that the Applicant and/or his qualifying relative would experience exceptional and extremely unusual hardship if the Applicant's waiver were denied.

On appeal, the Applicant submits additional evidence and argues that his conviction was not for a violent or dangerous crime. He alternatively asserts that denial of the waiver would result in exceptional and extremely unusual hardship, and that he merits a waiver in the exercise of discretion.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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 CIMT (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A)(i)(I) of the Act. Individuals found inadmissible under section 212(a)(2)(A)(i)(I) may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. A discretionary waiver is available if denial of admission would result in extreme hardship to the individual's U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. An individual who establishes statutory eligibility for a waiver under section 212(h)(1)(B) of the Act must also demonstrate that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver. Section 212(h)(2) of the Act.

However, a favorable exercise of discretion is not warranted for noncitizens 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" according to 8 C.F.R. § 212.7(d). Even if the noncitizen were able to show the existence of extraordinary circumstances pursuant to 8 C.F.R. § 212.7(d), that alone may 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 noncitizen'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

The Applicant does not contest the Director's determination that he is inadmissible due to his conviction for a CIMT, which is supported by the record. Rather, he contests the Director's finding that his conviction was for a violent or dangerous crime.[1] He alternatively claims that, if his conviction is considered a violent or dangerous crime, then he has also shown that refusal of the waiver would result in exceptional and extremely unusual hardship, and that he merits a waiver in the exercise of discretion.

We have reviewed the entire record, as supplemented on appeal, and conclude that it supports the Director's determination that the Applicant is subject to the heightened discretionary standard of 8 C.F.R. § 212.7(d) for having committed a violent or dangerous crime. In addition, we find that the record does not establish exceptional and extremely unusual hardship due to his continued inadmissibility.

A. Violent or Dangerous Crime

As stated, the Applicant asserts on appeal that he was not convicted of violent or dangerous crime. The words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation or case law. *See* 67 Fed. Reg. 78675, 78677-78 (Dec. 26, 2002) (explaining that defining and applying the "violent or dangerous crime" discretionary standard is distinct from determination that a crime is an aggravated felony). We consider "violent or dangerous" according to the ordinary meanings of those terms. Black's Law Dictionary (9th ed. 2009), 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."

The record shows that in 2011, the Applicant was convicted of voluntary infliction of harm or injury to another person under section 309 of the Penal Code of the Dominican Republic. The Applicant states that he disarmed his attacker, then used the attacker's machete knife to stab him. He claims that the facts of his case "do not indicate severe violence and do not indicate danger, since [the Applicant] was not the original aggressor." We note that the language of the regulation at 8 C.F.R. § 212.7(d)

[1] The Director found that the Applicant's spouse would experience extreme hardship if the Applicant's waiver application were denied, and he therefore meets the requirement of Section 212(h)(1)(B) of the Act. We will not disturb this finding.

states that the heightened discretionary standard applies to "violent or dangerous crimes" and does not require "severe violence" as asserted. We find that the record does not support the Applicant's claims.

First, by its plain language, the offense of which the Applicant was convicted relates to voluntarily injuring another person, conduct which is clearly unsafe or likely to cause harm. Furthermore, 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). The judge found that the Applicant, armed with a machete knife, beat and stabbed the victim multiple times, resulting in injuries of a severity that would require 8 to 12 months to heal. Under these circumstances, we find that the Applicant was convicted of a crime that was violent or dangerous, as those terms are ordinarily understood. We find, therefore, that the Applicant is subject to 8 C.F.R. § 212.7(d) for having committed a violent or dangerous crime.

B. Exceptional and Extremely Unusual Hardship

As noted above, 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, which include situations in which the foreign national has clearly established "exceptional and extremely unusual hardship" if the benefit is denied, or situations in which overriding national security or foreign policy considerations exist. Here, the Applicant does not assert that his case involves national security or foreign policy considerations. Therefore, we must determine if he and/or his U.S. citizen spouse will experience exceptional and extremely unusual hardship if he is denied admission into the United States.

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.

As set forth below, we conclude that the Applicant has not shown hardship that is substantially beyond the ordinary hardship that would be expected when a close family member leaves this country. In the present case, the record indicates that if the Applicant's waiver is denied, his spouse intends to remain in the United States. In support of his waiver request, the Applicant previously submitted his personal declaration, a statement from his spouse, documentation about his employment in the Dominican Republic, letters from family and friends, and an article about the availability of mental health services in the Dominican Republic. He also provided his spouse's medical documentation, including a psychological evaluation from [redacted], psychological and psychiatric reports from [redacted] Hospital, a report from her primary care physician, and a report from her neurologist with accompanying medical records.

In the Applicant's declaration he expresses remorse regarding his prior criminal conviction. He states that he speaks with his spouse several times a day to encourage her to get outside and not focus on her depression. He also asserts that she suffers physical pain and cannot do any heavy lifting or carrying.

He claims that he also gets depressed and sad about their separation. He provides that if he were permitted admission to the United States, he could help his spouse in fighting her depression, with physical tasks around the house, and financially, given his present work experience. The Applicant submitted employment verification letters showing he works as a janitor and pastry seller.

The spouse's declaration states that she is very sad because the Applicant is not with her, and that he could help her with daily tasks and give her love and support to help her feel more positive about her life. She asserts that she cannot reside with the Applicant in the Dominican Republic because she could not leave her son and his family and the medical care she receives in the United States. She also indicates she would feel unsafe there because of crime. She mentions that she is "able to get by financially" because she receives Social Security payments, rents out a room in her apartment, and sometimes receives money from her son.

The Applicant also provided a statement from the spouse's son, who indicates he visits the spouse once or twice a month. The son states that she "takes a lot of pills and has a lot of different ailments, although she doesn't talk to me much about all her health issues." He indicates that she is "prone to depression," and that he tries "to do what I can to make my mother feel better." He claims that the Applicant is the "only person that seems to raise my mother's spirits."

The psychological evaluation from [redacted] dated 2018 indicates that the spouse suffered childhood trauma and spousal abuse prior to her relationship with the Applicant, for which she has received mental health treatment periodically throughout her adult life. He states that she exhibits symptoms of Severe, Recurrent Major Depressive Disorder, Posttraumatic Stress Disorder, and Dependent Personality Disorder. She also suffers from chronic pain due to fibromyalgia and herniated lumbar discs related to heavy lifting at work. The evaluation indicates that the spouse, who is 66 years old, has been employed as a home health aide since coming to the United States in 1974. He provides that the spouse works for [redacted] but has not accepted a new assignment since the November 2017 death of a patient for whom she cared for nearly 20 years. The evaluation also provides that she met the Applicant in 2014, they married in 2016, and she speaks with the Applicant daily to quell her anxiety, remind her to take her medications, and encourage her to remain on her diet. The evaluation also confirms the spouse has an adult son from her previous marriage who resides nearby. The psychologist recommended that the spouse continue her ongoing psychotherapy and psychiatric care.

The psychological and psychiatric reports from outpatient clinics at [redacted] Hospital indicate that the spouse, who has a long history of depression treated in the past with medications and therapy, has received weekly individual therapy and monthly medication management since 2017 for Major Depressive Disorder, Moderate to Severe and Generalized Anxiety Disorder. They mention that she would benefit emotionally if the Applicant lived with her.

The report from the spouse's primary care physician indicates she suffers from hypothyroidism, arthritis, asthma, and hypertension, and that these conditions are well-controlled. The report from the spouse's neurologist, and related medical records, show that she suffers from chronic back pain from degenerative spinal disease with severe radicular leg pain. The spouse received medication and physical therapy and is considering the additional option of local injection. The records also indicate she is seeking a new work assignment with her employer after the death of her patient.

The Director found that the documentation submitted does not establish sufficiently the existence of exceptional and extremely unusual hardship. The Director acknowledged that the submitted psychological and psychiatric assessments indicate that the spouse suffers from depression and anxiety disorders and is benefitting from continuing psychotherapy and psychiatric management of her medication. Similarly, the records from her neurologist indicate a favorable response to physical therapy. In addition, the record did not demonstrate that the spouse's conditions affect her ability to work or engage in other activities. Specifically, the record indicated that the spouse stopped working due to the death of her patient, not due to her medical diagnoses, and that she was able to visit the Applicant in the Dominican Republic, accompanying him to the countryside and the beach.[2]

On appeal, the Applicant claims that the Director did not accord sufficient weight to the evidence submitted. The Applicant provides an additional statement from his spouse, who asserts that she continues to experience symptoms of depression for which she is prescribed medication. She states that she has been visiting the Applicant in [redacted] for several months but must return to the United States "to be near my doctors and get my medicine." An updated report from the spouse's psychologist provides that the spouse continues to receive weekly psychotherapy and monthly medication management with a psychiatrist for her major depression and post-traumatic stress disorders, and that she relies on her medical team, senior center community, and her son for her care. She provides that the spouse requires the added support of the Applicant's presence to further reduce her social isolation and depressive symptoms.

Regarding the spouse's emotional hardship, the psychological and psychiatric assessments indicate that the spouse exhibits symptoms of recurrent posttraumatic stress, major depression, and anxiety disorders and is benefitting from continuing psychotherapy and psychiatric evaluation for management of her medication, and do not suggest that she would be unable to obtain such treatment in the Applicant's absence. We are sympathetic to the emotional and mental health challenges that could result from the spouse's continued separation from the Applicant. Nevertheless, we find that the Applicant has not demonstrated that his spouse's emotional health requires him to provide her particular support to manage her conditions, beyond what would be expected between spouses.

Regarding the health-related hardship, the documentation submitted does not establish what specific assistance or support would be required or provided by the Applicant to ameliorate the spouse's medical diagnoses such that his absence would create exceptional and extremely unusual hardship for the spouse. The record does not contain a description from a treating physician that demonstrates sufficiently how her medical conditions affect her ability to work and her daily routine. As stated, although the record shows that the spouse did not seek a new work assignment after the death of her patient, it does not establish sufficiently her inability to work as a home health aide based on her medical conditions. In addition, the statement from the spouse's son does not indicate that she requires assistance in travelling to her medical appointments, taking her medications, or in other daily activities. Finally, the Applicant has not submitted documentation related to his spouse's financial situation, such as information about her regular monthly household income and expenses and her assets, and we cannot determine the level of financial hardship, if any, that she would experience if the Applicant's waiver application were denied.

[2] The record indicates she also visited her mother who resides in the Dominican Republic.

We recognize that the Applicant and his spouse would experience difficulties if the Applicant were denied admission, including the spouse's emotional and psychological hardship because of her continued separation from the Applicant, due to her past relationship history and the loss of his emotional support and company. As discussed above, however, the aggregate medical, psychological, and financial factors, when reviewed individually and cumulatively, are insufficient to meet the significantly higher standard of exceptional and extremely unusual hardship as set forth under 8 C.F.R. § 212.7(d). The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.