U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20198793

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 waiver request, concluding that the Applicant did not establish that refusal of admission would cause extreme hardship to his spouse, the only qualifying relative.

On appeal, the Applicant submits additional documentation and argues that he is not inadmissible. He alternately asserts that he has established extreme hardship to his qualifying relative.

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 who are 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.

II. ANALYSIS

As stated, the Applicant contests the Director's finding that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a CIMT. He alternately asserts that his spouse would experience extreme emotional and financial hardship due to his continued inadmissibility. We have reviewed the entire record, as supplemented on appeal, and conclude that it supports the Director's determination that the Applicant is inadmissible for having been convicted of a CIMT and has not established that his spouse would experience extreme hardship upon refusal of admission to the United States.

A. Inadmissibility under section 212(a)(2)(A)(i)(I) of the Act

The record reflects that in 2012 the Applicant was found guilty of the offense of association with criminal intent and sexual aggression in detriment of a minor, in violation of articles 265, 266, and 330 of the Dominican Penal Code, and 396 and 397 of Law 136-03, Code for the System of Protection and Fundamental Rights of Children and Adolescents. The Applicant was sentenced to five years in jail and served approximately seven months. In 2018 the Applicant received an extinction of the conviction. The U.S. Department of State (DOS) subsequently determined that the Applicant was inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act as a noncitizen convicted of a CIMT.

As an initial matter, to the extent the Applicant asserts he was wrongfully accused of the criminal charges against him, we cannot go behind a conviction to assess his guilt or innocence. *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (citing *Matter of Fortis*, 14 I&N Dec. 576, 577 (BIA 1974)); *see also Matter of Khalik*, 17 I&N Dec. 518, 519 (BIA 1980). The Applicant does not contest that a conviction for sexual abuse of a minor is a CIMT. Rather, he claims that because he subsequently received an extinction of the conviction, he does not have a conviction for immigration purposes. In support of his contention, he has submitted certifications, including from the Criminal Investigations Department of the Dominican National Police and the District Attorney's Office of the Judicial District of the National District, indicating there are no criminal records under his name. We find that the record does not support the Applicant's claim.

The Act defines "conviction" as a formal judgment of guilt entered by a court, or, if adjudication of guilt has been withheld, where a judge or jury has found the person guilty or the person has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the person's liberty. Section 101(a)(48) of the Act, 8 U.S.C. § 1101(a)(48). In addition, a conviction vacated for reasons unrelated to a procedural or substantive defect in the underlying criminal proceedings remains a conviction for immigration purposes. *See Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003), *rev'd on other grounds*, *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006); *see also Matter of M-*, 9 I&N Dec. 132, 134 (BIA 1960) (foreign pardons do not erase a foreign criminal conviction for immigration purposes).

Here, as noted above, the Applicant was convicted of sexual abuse of a minor and was sentenced to five years in jail. The record shows that he later received an extinction of his conviction pursuant to a rehabilitative provision in the Dominican Code of Criminal Procedure that allows a court to provide an extinction of a conviction after the offender successfully completes the terms and conditions of his

sentence. As the extinction of the Applicant's conviction was not on the merits or on grounds relating to a statutory or constitutional violation, he remains convicted for immigration purposes. Furthermore, as the Applicant is residing abroad and applying for an immigrant visa, DOS makes a final determination concerning his eligibility for the visa and any applicable inadmissibility grounds. The Applicant therefore requires a waiver of that inadmissibility ground.

B. Extreme Hardship

The next issue is whether the Applicant has established extreme hardship to his spouse, as required to qualify for a waiver of inadmissibility under section 212(h)(1)(B) of the Act and, if so, whether he merits the waiver as a matter of discretion. A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to a qualifying relative is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the "common result of deportation" and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant and 2) if the qualifying relative relocates overseas with the applicant. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing guidance on the scenarios to consider in making extreme hardship determinations). Demonstrating extreme hardship under both these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)). The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See id.* In the present case, the record does not contain a clear statement from the Applicant's spouse indicating whether she intends to remain in the United States or relocate to the Dominican Republic if the Applicant's waiver application is denied. The Applicant must therefore establish that if he is denied admission, his spouse would experience extreme hardship both upon separation and relocation.

In support of his waiver request, the Applicant initially submitted evidence including his personal declaration, a statement from his spouse, psychological evaluations of his spouse, financial documents, letters from friends and family, and a report dated 2020 from DOS on general country conditions for the Dominican Republic. The spouse's initial affidavit indicates that she was born and resides in New York and attended high school in the Dominican Republic. She provides that she works in New York as a full-time sales supervisor at [redacted] and a part-time aide to special needs children at the Center for Human Development and Family Services. She indicates she lives in a one-bedroom apartment where she has difficulty affording the rent. She states that she suffers from chronic migraines and asserts that she needs the Applicant's financial and emotional support. Within the Applicant's response to the Director's request for additional evidence (RFE), he provided additional

statements from his spouse, who indicates that she is pregnant and collecting unemployment benefits, having lost her jobs due to the 2020 coronavirus (COVID-19) pandemic. She asserts that her unemployment benefits "are barely enough to eat and pay rent" and she faces "possible evictions." She also provides that she feels depressed despite continuing with psychological counseling.

The Applicant's declaration asserts that the couple's combined income is not enough to cover their expenses. In an additional statement provided within his RFE response, he states that his spouse continues to experience symptoms of depression and is unemployed. He claims that he cannot help his spouse sufficiently because what he earns in the Dominican Republic "is very little and is also used to pay debts."

Regarding emotional hardship, the Applicant initially provided several psychological evaluations dated between July and December 2019 from a clinical psychologist with [redacted] Center in Puerto Rico that indicate the spouse suffers from Major Depressive Disorder Severe and has a poor prognosis. Her symptoms include extreme sadness, tearfulness, lack of pleasure or motivation, insomnia, weight gain, recurrent anxiety and pessimistic thoughts related to her separation from the Applicant. The evaluations indicate that the spouse lives in the U.S. Virgin Islands and has been receiving individual monthly sessions of psychotherapy for six months "to preserve her mental health." The reports relate that the spouse was prescribed the use of [redacted] teas to reduce anxiety, melatonin to improve her sleep, Omega-3 to help with depression, and structured breathing exercises and daily walks for relaxation. Within his RFE response, the Applicant provided two updated psychological evaluations dated April and October 2020 stating that his spouse continues to receive individual sessions of psychotherapy to treat her depression and anxiety.

Regarding financial hardship, the Applicant has provided employment verification letters stating that he works as an accounting assistant with [redacted] with annual earnings of RD$394,000, and with [redacted] on a part-time basis with a net salary of RD$10,000. Copies of the spouse's 2018 federal income tax returns indicate she earned $19,635. The record also contains bills showing that the spouse makes monthly loan payments in the amount of $718 and has credit card balances in the total amount of approximately $3,000. Two letters from Western Union provide that between 2013 and 2019 the Applicant and his spouse have sent money to each other. Within the Applicant's RFE response, he provided an additional employment verification letter stating that he was works as a technician with [redacted] with monthly earnings of RD$20,000. He also submitted his telephone bill, house lease, and 30-month promissory note for the amount of RD$392,000. Additional financial documents include a letter showing the spouse's reduced monthly loan payment of $250, her utility bill dated May 2020 for the premises at [redacted] Avenue 3C in [redacted] New York, and a letter dated January 2021 from the spouse's uncle, [redacted] indicating that although his name is on the lease for the [redacted] Avenue premises, the spouse is solely responsible for the rent.

The Director acknowledged that although the evidence indicates that the spouse was suffering from a depression disorder, that evidence did not show that hardship to the spouse would exceed that which is usual or expected, as the psychological reports indicate that the spouse is able to attend her regularly scheduled appointments and the treatment is meeting her medical and psychological needs. Regarding financial hardship, the Director found that the above letter from the spouse's uncle alone did not establish sufficiently that she was responsible to pay the rent for that apartment. In addition, the Applicant had not submitted updated financial documentation to corroborate the couple's income,

expenses, assets, or liabilities, to provide a complete picture of their financial situation and establish the full impact upon the spouse if the Applicant is denied admission. The Director therefore concluded that the evidence considered in the aggregate was insufficient to substantiate the claimed extreme financial and emotional hardship to the Applicant's spouse.

On appeal, the Applicant maintains that his spouse would experience extreme hardship if he were denied admission. He submits his updated hardship statement, in which he provides that he lost his job because of the COVID-19 pandemic. He also submits his spouse's updated hardship statement in which she reasserts that she will experience extreme hardship if the Applicant is denied admission. She provides that she is living with her parents, is unemployed, and continues to experience symptoms of depression and anxiety. The Applicant also submits his psychological evaluation, his completion certificates for courses in finance and accounting, his spouse's updated psychological evaluation, additional financial documents, general information about country conditions in the Dominican Republic, and reference letters from friends and acquaintances.

The Applicant's psychological assessment indicates that he exhibits symptoms of Single Depressive Episode Severe and would benefit from psychotherapy and will receive weekly cognitive behavioral treatment. The spouse's updated psychological assessment dated May 2021 indicates that she continues to suffer from depression and anxiety disorders and has scheduled psychotherapy appointments. Two credit reports for the spouse show that she has approximately $4,000 in credit card debt and that her loan was closed.

We find that if the Applicant's spouse remains in the United States without the Applicant, there is insufficient evidence to show that her hardship would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Pertaining to emotional and psychological hardship, although we acknowledge the mental health professional's aforementioned diagnoses concerning the spouse's mental health, we find that her statements in several of those evaluations pertaining to the economic and social conditions in the Applicant's home country and legal conclusions regarding extreme hardship are outside the area of her expertise.

Regarding the spouse's mental health, the assessments indicate that the spouse exhibits symptoms of a severe major depressive disorder with anxiety and would benefit from continued psychotherapy and the use of relaxation techniques, but the evidence does not show that these conditions affect the spouse's ability to engage in her daily activities. Nor is there evidence that the spouse relies on the Applicant's help in managing her psychological symptoms aside from his general emotional support, or that she is otherwise dependent on the Applicant for care. In addition, the record reflects that the spouse lives with her parents and there is insufficient evidence that her parents could not provide her emotional or other support in the Applicant's absence. Although the spouse stated that she will experience anxiety and distress without the Applicant's presence and care, the submitted evidence does not document in detail how the spouse would experience emotional or psychological hardship that would exceed that which is usual or expected due to separation. Nor does the record establish that the spouse would not be able to obtain the necessary treatment in the Applicant's absence.

Regarding financial hardship, the Applicant reasserts that refusal of admission will result in extreme hardship to his spouse. We acknowledge that the Applicant claims financial obligations and recognize that his spouse may experience some financial difficulty without him. Upon review, we find that the

record does not demonstrate that the Applicant's spouse would be unable to afford her primary expenses. Regarding those expenses, although the Applicant submitted a letter from his spouse's uncle indicating his spouse is solely responsible for the rent for the [redacted] Avenue residence, the evidence does not establish sufficiently that she resides at that address. In other documentation in the record, including the above psychological evaluations, the waiver application, and this appeal, the spouse indicates she resides in the U.S. Virgin Islands. Nor does the record contain evidence that the spouse has made payments for rent or utilities for the [redacted] Avenue residence. Further, the documentation submitted does not establish what the spouse's living expenses are in the U.S. Virgin Islands or what her parents, with whom she resides, could financially contribute to those expenses.

Finally, the record does not show that the Applicant, with experience as an accounting assistant and technician, would be unable to be employed in the Dominican Republic in those professions. As discussed previously, the record indicates the Applicant is working for three companies. Although on appeal he asserts that he has lost his job due to the COVID-19 pandemic, it is unclear whether he continues to work for some or all of those companies. We therefore agree with the Director's determination that the record does not provide a complete picture of the couple's financial situation and, as such, is insufficient to establish that the spouse would face financial strain going beyond the hardship typically resulting from separation from a spouse.

We acknowledge that the Applicant's spouse would experience difficulties if separated from the Applicant. Although we are sympathetic to their circumstances, even considering all the evidence in its totality, the record remains insufficient to show that her hardships would be unique or atypical compared to others in similar circumstances, rising to the level of extreme hardship. As stated, the Applicant must establish that denial of the waiver application would result in extreme hardship to his spouse both upon separation and relocation. Since the Applicant has not established extreme hardship to his spouse in the event of separation, we cannot conclude that he has met this requirement.

As the Applicant has not demonstrated extreme hardship to a qualifying relative if he is denied admission, we need not consider whether he merits a favorable exercise of discretion, including whether the Applicant's offense is a violent or dangerous crime and, if so, whether he has established the existence of extraordinary circumstances as set forth in 8 C.F.R. § 212.7(d), and we reserve these issues.[1] The waiver application will therefore remain denied.

ORDER: The appeal is dismissed.

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach.) Here, there is no constructive purpose to addressing these issues because they do not change the outcome of the appeal.