U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19575463

Date: FEB. 1, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant 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 application, determining that the Applicant's conviction for robbery was a crime involving moral turpitude, as well as a violent or dangerous crime, subjecting him to a heightened discretionary standard. The Director determined that the Applicant did not meet this heightened standard and denied the application as a matter of discretion.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

I. LAW

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides that any foreign national 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). Section 212(h)(1)(A) of the Act provides for a 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 foreign national has been rehabilitated. Section 212(h)(1)(B) of the Act provides for a waiver if denial of admission would result in extreme hardship to a U. S. citizen or lawful permanent resident spouse, parent, son, or daughter, or in the case of an applicant for a fiancé(e) visa, extreme hardship to the petitioning U.S. citizen fiancé(e). If, however, the foreign national's conviction is for a violent or dangerous crime, USCIS may not grant a waiver unless the foreign national also shows "extraordinary circumstances" with the final stipulation that,

even if such a showing is made, the waiver can still be denied because of the gravity of the offense. 8 C.F.R. § 212.7(d).

II. ANALYSIS

The record reflects that courts in Vietnam convicted the Applicant for two offenses: 1996 theft and 2006 robbery. The courts sentenced the Applicant to three years in prison for the first offense and three years and six months in prison for the second offense. The Director found that his convictions deemed him inadmissible under section 212(a)(2)(A)(i)(I) of the Act for crimes involving moral turpitude.[1] In regards to a waiver of this inadmissibility, the Director concluded that the Applicant demonstrated extreme hardship to his U.S. citizen parents under section 212(h)(1)(B) of the Act. However, the Director determined that his conviction for robbery was a dangerous or violent crime, and the record did not show extraordinary circumstances. Thus, the Director denied the waiver application as a matter of discretion under section 212(h)(2) of the Act and 8 C.F.R. § 212.7(d).

On appeal, the Applicant does not contest his inadmissibility. However, the Applicant claims that his robbery conviction was not a dangerous or violent crime. Further, the Applicant contends that he is now eligible for the rehabilitation waiver under section 212(h)(1)(A) of the Act.

A favorable exercise of discretion is not warranted for applicants who have been convicted of a violent or dangerous crime, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which denial of the application would result in exceptional and extremely unusual hardship. 8 C.F.R. § 212.7(d). In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board of Immigration Appeals (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.

The Applicant claims that the Director assumed that robbery under any statute is a violent or dangerous crime, and he was only convicted under dangerous recidivism, which is neither violent nor dangerous. However, the record does not support the Applicant's assertions. On appeal, the Applicant submits an "Enforceable Effect Judgment" from the People's Court of [redacted] detailing both the offense and conviction. According to the judgment, the Applicant was driving a motorbike carrying another individual. They drove beside another motorbike carrying two individuals, the Applicant tried to pull a gold chain off of one of the individuals, both parties lost their balances, and the parties fell onto the road. In convicting the parties, the court stated:

> The above-mentioned acts of defendants . . . intentionally used large-speed motorcycles with high speed as a means of causing a crime which could endanger the lives of the accused themselves, Victims of harm or persons committing a traffic on the road are

[1] The Applicant is also inadmissible under 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B) for having multiple criminal convictions for which the aggregate sentences to confinement were five years of more.

guilty of using dangerous tricks, which are considered as criminal offenses defined in Point d, Clause 2, Article 136 of the Criminal Code.

The Applicant also provides a copy of the Vietnamese Penal Code (VPC) for "property robbery by snatching" under article 136 including the provisions of (2)(c) for "dangerous recidivism" and (2)(d) for "employing dangerous tricks."

Although the Applicant claims that he was convicted for "having committed the offense of [VPC] Article 136(2)(c)" or dangerous recidivism, the record shows that he was only convicted under article 136(2)(d) of the VPC, employing dangerous tricks. In fact, the other individual was convicted for dangerous recidivism, as well as for employing dangerous tricks. Accordingly, the record and evidence do not support the Applicant's assertion of only being convicted for dangerous recidivism under property robbery.

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 (December 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). Pursuant to our discretionary authority, we understand "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." 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).

Here, the plain language of the VPC under which the Applicant was convicted shows that the offense is characterized as "dangerous." Furthermore, the court indicated that he "intentionally used large-speed motorcycles with high speed as a means of causing a crime which could endanger the lives of the accused themselves, Victims of harm or persons committing a traffic on the road," reflecting the dangerous nature of the crime. For these reasons, the Applicant's robbery conviction contained a dangerous element. When a foreign national 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 foreign national has established "exceptional and extremely unusual hardship" if the benefit is denied, or situations in which overriding national security or foreign policy considerations exist. However, even if an applicant can demonstrate the existence of these extraordinary circumstances, depending on the gravity of the applicant's offense, we may still decline to consent to his or her admission as a matter of discretion.

On appeal, the Applicant does not contest or submit evidence relating to a claim of extraordinary circumstances. We will therefore not address this issue further. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived); *Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) (finding that an issue referred to in an appellant's statement of the case but not discussed in the body of the brief is deemed waived).

We note that the Applicant contends that since his robbery offense occurred in 2006, he is now eligible for a rehabilitation waiver because 15 years have elapsed. Section 212(h)(1)(A) of the Act provides for a 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 foreign national has been rehabilitated. Although the Applicant is now eligible to seek a rehabilitation waiver, he did not make any claims, nor did he provide evidence, that his admission would not be contrary to the national welfare, safety, or security of the United States, and he has been rehabilitated. Regardless, like the extreme hardship waiver under section 212(h)(1)(B) of the Act, the rehabilitation waiver under section 212(h)(1)(A) of the Act is subject to the same discretionary waiver provisions under section 212(h)(2) of the Act and 8 C.F.R. § 212.7(d). Even if he met the rehabilitation waiver requirements under section 212(h)(1)(A) of the Act, he would not warrant a favorable exercise of discretion because of his conviction of a dangerous crime and the absence of extraordinary circumstances as discussed above.

III. CONCLUSION

The Applicant, having been convicted of a crime involving moral turpitude that is also a dangerous crime, has not demonstrated extraordinary circumstances under a heightened discretionary standard. Accordingly, the Applicant has not established eligibility that approval of a waiver of inadmissibility under section 212(h) of the Act is warranted as a matter of discretion.

ORDER: The appeal is dismissed.