U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20235622

Date: JAN. 31, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a citizen of Hong Kong, has applied for an immigration benefit and seeks a waiver of inadmissibility 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). Section 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A), provides a waiver for this inadmissibility if the activities for which the noncitizen is inadmissible occurred more than 15 years before the date of the application for a visa; the noncitizen's admission to the United States would not be contrary to the national welfare, safety, or security of the United States; and the noncitizen has been rehabilitated. Alternatively, section 212(h)(1)(B) of the Act, 8 U.S.C. § 1182(h)(1)(B), provides for a waiver of this inadmissibility if denial of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse, parent, or child of the noncitizen.

The Director of the Nebraska Service Center denied the application, concluding that the record established that the Applicant was inadmissible to the United States under section 212(a)(2)(d) of the Act for being convicted of a crime involving moral turpitude, failure to control or report a dangerous fire, in addition to being convicted of endangering the welfare of a child, and assault. The Director specifically concluded that the Applicant's conviction for failure to control or report a dangerous fire constitutes a conviction for a violent or dangerous crime, as contemplated by 8 C.F.R. § 212.7(d). On appeal, the Applicant asserts that none of the convictions constitute convictions for violent or dangerous crimes and that denial of admission would result in extreme hardship to the Applicant's qualifying relative, her U.S. citizen son.

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

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), 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. 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 noncitizen 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 United States citizen or lawful permanent resident spouse, parent, son, or daughter. If, however, the noncitizen's conviction is for a violent or dangerous crime, USCIS may not grant a waiver unless the noncitizen 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).

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 qualifying relatives 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).

II. ANALYSIS

As a threshold issue, we need not determine whether the Applicant's conviction of failure to control a dangerous fire, 18 Pa. Cons. Stat. § 3301(e), constitutes a conviction for a violent or dangerous crime as contemplated by 8 C.F.R. § 212.7(d), which would trigger a heightened discretionary standard, because the record does not establish that denial of admission would result in extreme hardship to a qualifying relative under section 212(h)(1)(B) of the Act. The Director similarly concluded that the qualifying relatives' hardships are "deemed to not rise to the level of extreme hardship—let alone exceptional and extremely unusual hardship [triggered for a violent or dangerous crime]." As another threshold issue, the record establishes that the activities for which the Applicant is inadmissible occurred in 2016, less than 15 years before the date of the application for the visa, and the Applicant does not assert eligibility for a waiver under section 212(h)(1)(A) of the Act. Accordingly, we limit our review to whether the record establishes eligibility for a waiver under section 212(h)(1)(B) of the Act.

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. Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. 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. 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/legal-resources/policy-memoranda.

The Applicant submitted a three-page statement dated June 2019 from the Applicant's adult child, a U.S. citizen, who is a qualifying relative for the purposes of section 212(h)(1)(B) of the Act. The statement asserts that the Applicant's adult child "is suffering from severe depression and other mental illnesses as a result of [the Applicant's] arrest" and that he is "currently on medication." The statement further asserts, "I fear that if [the Applicant] is not permitted to return to the United States, my condition will be exacerbated." The statement also indicates that the Applicant's adult child would remain in the United States to pursue a career because he believes Hong Kong "will become communist [and] I do not wish to live in a communist country." Based on this statement from the Applicant's son indicating his intent to remain in the United States, the Applicant must establish that if she is denied admission, her qualifying son would experience extreme hardship upon separation.

The Applicant also submitted a one-paragraph statement from [redacted] dated April 2019, diagnosing the Applicant's adult child with schizophrenia. Although the statement notes that the Applicant's adult child has been hospitalized for schizophrenia in the past, "[h]e is now prescribed abilify [*sic*] which is treating his symptoms and has not required further inpatient care." The statement concludes by asserting, "My patient believes [the Applicant] would be able to help support him and his treatment and is an important part of his recovery. He feels too without her return he will be more likely to need rehospitalization for his schizophrenia." The record also contains a psychological evaluation of the Applicant's adult child performed by [redacted] dated June 2021, diagnosing him with schizoaffective disorder, noting that he is "currently in full remission." The Director observed that "[t]he hardships identified above appear to be controlled through non-extreme measures, such as prescription medications." The Director further stated, "it cannot be concluded from the evidence submitted that the family separation issues rise above those commonly associated with either removal or visa refusal involving close family members."

On appeal, the Applicant asserts that her adult child "is now engaged in intense psychiatric care" and that "medical documentation repeatedly referenced the fact that, if [he] is forced to live in Hong Kong, his condition would be exasperated [*sic*] and would worsen." However, his underlying psychiatric condition pre-dates the Applicant's inadmissibility and is deemed by medical professionals to be "currently in full remission" due to prescription medication. Moreover, the Applicant's assertions on appeal regarding her adult child's possible relocation to Hong Kong are misplaced, given that his statement specifically asserted that he would not relocate to Hong Kong. The record does not contain another statement from the Applicant's adult child to contradict that assertion. The record does not otherwise establish how the Applicant's adult child's treatment of his pre-existing psychiatric condition rises above the common results of removal in order to constitute extreme hardship. *See Matter of Pilch*, 21 I&N Dec. at 630-31.

The Applicant also has a juvenile child, a U.S. citizen; however, the Applicant does not address on appeal the Director's determination that her denial of admission would not result in extreme hardship to her juvenile child. We have reviewed the Director's decision and the record in its entirety and agree that the record does not establish that the hardships the Applicant's juvenile child may experience upon the Applicant's inadmissibility rises above the common results of removal in order to constitute extreme hardship. *See id.*

The Applicant also asserts on appeal that the Director "sidestepped all of the hardship issues, including the issue regarding country conditions." However, the Applicant's references to country conditions

where she resides are misplaced because her qualifying relative specifically asserted that he would not relocate to that country; therefore, the conditions abroad do not constitute a hardship he would experience. At issue on appeal is whether denial of admission of the Applicant will result in extreme hardship to her qualifying relative, who plans to remain in the United States. Therefore, the country conditions in Hong Kong are not at issue here.

The Applicant also addresses on appeal hardships experienced by the father of her two U.S. citizen children. However, the Director specifically observed in the decision, "As you are not married to [the father of the Applicant's U.S. citizen children], he is not considered a qualifying relative for purposes of [Immigration and Nationality Act section] 212(h)(1)(B) – extreme hardship analysis." *See* section 212(h)(1)(B) of the Act (providing that "extreme hardship to the United States citizen or lawfully permanent resident spouse, parent, son, or daughter of [an otherwise inadmissible noncitizen]" may establish eligibility for a discretionary waiver). The Applicant does not establish on appeal that the Director erred in concluding that she is not married to the father of the Applicant's U.S. citizen children and, therefore, he is not a qualifying relative for the purposes of section 212(h)(1)(B) of the Act. On the contrary, the Applicant refers to herself on appeal as his "fiancé," indicating that the two individuals are not married. Accordingly, hardships that the father of the Applicant's U.S. citizen children may experience upon the Applicant's removal are immaterial to determining whether a qualifying relative would experience hardships that rise above the common results of removal. *See Matter of Pilch*, 21 I&N Dec. at 630-31.

Although we address each specific hardship factor identified on appeal separately, we have considered the issues in the aggregate, *Matter of Ige*, 20 I&N Dec. at 882, but find that they do not rise above the common results of removal. In summation, considering the record in its entirety, the Applicant has not established by a preponderance of the evidence that denial of the waiver would result in extreme hardship to her qualifying relative upon separation.

ORDER: The appeal is dismissed.