U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13575692

Date: JAN. 31, 2022

Appeal of Orlando Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(h)(1)(B), 8 U.S.C. § 1182(h)(1)(B), for his conviction of two crimes involving moral turpitude (CIMTs).

The Director of the Orlando Field Office in Florida denied the application. He concluded that the Applicant did not establish that his qualifying relatives would suffer extreme hardship if his waiver application was denied. In this matter the Applicant's qualifying relatives are his U.S. citizen wife and daughter, as well as his legal permanent resident (LPR) mother. On appeal the Applicant does not contest his two CIMT convictions, but asserts that the Director's decision was improper because it did not adhere to the USCIS policy manual by analyzing all of the factors discussed therein to determine whether the denial of the waiver application would result in extreme hardship to any of his qualifying relatives. The Applicant claims that these factors establish extreme hardship for his qualifying relatives and requests that his waiver application be approved.

The AAO reviews the questions in this matter *do novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Applicant bears the burden of proof to establish eligibility for the requested benefit 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 our *de novo* review we will withdraw the Director's decision. We will remand the case for further consideration and the issuance of a new decision.

I. LAW

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.

Noncitizens 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 the noncitizen's United States citizen or lawful permanent resident spouse, parent, son, or daughter.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *See 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. *See Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). In these proceedings it is the applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

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 burden is on the noncitizen to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Morales,* 21 I&N 296, 299 (BIA 1996). 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). 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). 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 record indicates that the Applicant was born in [redacted], Colombia, was brought to the United States by his mother at the age of five, and has resided in the United States ever since. The Applicant's mother acquired LPR status, but her son never did. In 1999 the Applicant was arrested in New Jersey

on a charge of burglarizing a residential building, and was convicted of that charge in 2001. In 2013 the Applicant was arrested in Florida on a charge of battery against his then girlfriend, and was convicted later that year of battery domestic violence. In early 2018 the Applicant married a native-born U.S. citizen, who had a U.S. citizen daughter born in 2015 from a previous relationship. In [redacted] 2019 the Applicant and his wife had a son, who is also a U.S. citizen.

On May 31, 2018, the Applicant's wife filed a Form I-130, Petition for Alien Relative, on his behalf, and on the same date the Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. In response to a request for evidence on September 27, 2019, the Applicant filed his Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), on December 23, 2019. Among the materials submitted in support of the waiver application was an affidavit from the Applicant's wife stating that she "cannot uproot the family and move to Colombia" if her husband's waiver application is denied. Thus, the Applicant's wife indicated that she would remain in the United States if he is forced to return to Colombia. After approving the Form I-130 petition on February 7, 2020, the Director denied the waiver application on February 11, 2020, and dismissed a motion to reopen and reconsider on May 14, 2020.

In the initial decision denying the waiver application the Director stated that the crimes the Applicant committed in 1999 (burglary) and 2013 (battery domestic violence) were CIMTs.[1] Since the latter crime was committed less than 15 years before the filing of the Applicant's adjustment of status application, a waiver under section 212(h)(1)(A) of the Act was precluded. Therefore, the Director discussed whether a waiver was available under section 212(h)(1)(B) of the Act based on extreme hardship to a qualifying relative. The Director listed the documentation submitted by the Applicant, which included a brief from counsel; affidavits from the Applicant, his wife, and his mother; a series of character references from the Applicant's friends and relatives in the United States; a series of statements from the Applicant's friends and relatives in Colombia advising that he not return to that country; a country conditions report on Colombia from the U.S. Department of State (DOS) discussing crime and violence in the country; and numerous photographs of the Applicant's immediate and extended family.

Addressing the claims of the Applicant and his wife that his removal to Colombia would be an extreme financial hardship to her and his daughter, the Director noted that the only relevant evidence in the record was a copy of the federal income tax return filed jointly by the Applicant and his wife for 2018 and some joint bank account statements. The tax return showed that the Applicant and his wife were both self-employed and that the Applicant, according to Schedule C, had gross receipts of $750.00, total expenses of $4,008.00, and a net loss of $3,258.00 in 2018. The Director indicated that these materials were insufficient to demonstrate that the Applicant's wife and daughter would experience extreme financial hardship, above and beyond that which would typically result from a family member leaving the United States, if the Applicant returns to Colombia. Addressing the claims that the Applicant's wife and daughter, as well as his mother, would experience extreme emotional hardship if he must return to Colombia, the Director indicated that no documentary evidence had been submitted

[1] The Director also discussed several other offenses committed by the Applicant in 2014 and 2015, but did not indicate that they constituted additional CIMTs.

relating to these claims. In sum, the Director concluded that the Applicant had not met his burden of proof to establish extreme hardship to any qualifying relative if he is removed from the United States.

In the appeal currently before us the Applicant argues that the Director's denial decision in February 2020 did not comport with the USCIS policy manual on waivers for extreme hardship, which sets forth a series of factors that should be considered in waiver applications. According to the Applicant, the Director based the denial of his waiver application exclusively on the 2018 federal tax return of the Applicant and his wife, and in dismissing the motion to reopen and reconsider failed to take additional evidence of the Applicant's income for 2019 and 2020 into account, as well as evidence that he was currently employed full-time by [redacted] earning $10.00 per hour. In the appeal brief the Applicant focuses on nine factors identified in the policy manual and their alleged applicability to the instant waiver application. The brief points out that the Applicant has lived in the United States since he was five years old, has no immediate family ties in Colombia, and that extended family members in that country have stated that they cannot take him in. The brief states that the Applicant's deportation would deprive his daughter of a parent, with negative psychological consequences for his wife and daughter. The brief also asserts that the Applicant's departure would have negative economic consequences for his wife because it would create a childcare expense, make it harder for her to work a full-time job, and stunt her career. In addition, because of Colombia's poor economy the Applicant asserts he was unlikely to find a good job to help support his family in the United States. Finally, the brief echoes the sentiments the Applicant's wife expressed in the affidavit she submitted with the waiver application that, in addition to the psychological pain of separation from her husband, she feared that he would be a target for ransom, robbery, or killing back in Colombia because of his ties to the United States. As evidence of the dangerous conditions in Colombia the brief references the previously submitted DOS country report and documentary evidence that two of the Applicant's relatives in Colombia were shot (and one died) as robbery victims in the fall of 2019.

Based on the appeal brief and supporting documentation, we make the following findings: With regard to the economic hardship the Applicant's wife and daughter would suffer in his absence, the only additional evidence submitted after the Director's initial denial decision was a copy of the Applicant's 2019 Form 1099-MISC which recorded income of $3,645 from [redacted] that year, and copies of a paycheck and earnings statement issued to the Applicant by [redacted] in March 2020 which show that he was paid $583.14 for a two-week pay period. The evidence in the record (including the previously discussed tax return for 2018) shows that the Applicant earned very little in 2018 and 2019, and though he claims to have been employed full-time by [redacted] in 2020, the earnings statement accompanying the only paycheck in the record indicates that the Applicant had just been hired in late February 2020. There is no documentation showing that the Applicant remained employed and how much he earned after March 2020. Thus, the record does not show that the Applicant's earnings were very high. Accordingly, the loss of his documented income would not appear to be evidence of extreme financial hardship to the Applicant's wife and daughter.

As for the emotional hardship the Applicant's qualifying relatives would assertedly experience if the Applicant must return to Colombia, the record includes the statements of the Applicant's wife and his mother describing how upset they would be without the Applicant's continued presence in their lives, and in his wife's case how much she depends on him for emotional and physical support. Standing alone these statements would not be sufficient to sustain a finding of extreme hardship to the Applicant's wife or mother. However, the Applicant's wife and mother also express fears for his

safety in Colombia, and consequent emotional hardship to them, an issue which the Director did not address in his decision. As previously indicated, a DOS country conditions report on Colombia was submitted with the waiver application in December 2019. The report discussed a broad range of human rights violations and criminal activity in Colombia, warned about traveling to certain areas, and offered general advice to "[e]xercise increased caution in Colombia due to crime, terrorism, and kidnapping." The report stated that "[v]iolent crime, such as homicide, assault, and armed robbery, is common. Organized criminal activities, such as extortion, robbery, and kidnapping for ransom, are widespread." Also accompanying the waiver application was evidence that two of the Applicant's relatives had recently been shot by armed robbers, including copies of a funeral announcement for one relative who had died and a photograph of the other relative who was allegedly brain dead from a bullet in the head, as well as corroborating statements from relatives in Colombia. In the Director's decision the DOS country conditions report and the evidentiary materials regarding the crime victims in Colombia were listed as submitted documentation, but there was no substantive discussion of any of this evidence in the decision. The fears expressed by the Applicant's wife and mother about the Applicant's safety in Colombia were not even mentioned in the decision. This omission warrants a remand so that the full scope of the qualifying relatives' extreme hardship claims can be properly considered.

III. CONCLUSION

For the reasons discussed above, we will remand this case for further consideration of whether the Applicant's qualifying relatives would experience extreme hardship if the Applicant is removed to Colombia , or if they may experience extreme hardship when country condition factors and emotional hardship are aggregated with other hardship factors. If deemed necessary, the Director may request any additional evidence relevant to this determination.

Should the Applicant establish extreme hardship, the Director may also need to determine whether the Applicant is required to meet the heightened discretionary standard of 8 C.F.R. § 212.7(d) to qualify for a waiver of his criminal inadmissibility since it appears that the second of his two CIMT convictions – for "battery domestic violence" – was a violent crime. The regulation provides that a favorable exercise of discretion will generally be withheld "in cases involving violent or dangerous crimes" unless it is clearly demonstrated that a denial "would result in exceptional and extremely unusual hardship."

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing conclusion.