



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 21943121

Date: JUL. 25, 2022

Appeal of Washington, DC Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Bolivia, seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), for having been convicted of a crime involving moral turpitude. The Director of the Washington, DC Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not merit a favorable exercise of discretion. The matter is now before us on appeal. On appeal, the Applicant submits evidence and a brief asserting his eligibility. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

I. LAW

A 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. Section 212(a)(2)(A)(i) of the Act. A discretionary waiver is available if denial of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. Finally, if a foreign national demonstrates his or her eligibility under section 212(h)(1)(B) of the Act, United States Citizenship and Immigration Services must then decide whether to exercise its discretion favorably and consent to the foreign national's admission to the United States. Section 212(h)(2) of the Act.

With respect to the discretionary nature of a waiver, the burden is on the Applicant 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). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted). However, a favorable exercise of discretion is not warranted for foreign nationals 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.” 8 C.F.R. § 212.7(d). Even if the foreign national 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 gravity of the foreign national’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).

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The record reflects that the Applicant was charged with object sexual penetration and sexual battery under sections 18.2-67.2 and 18.2-67.4 of the Annotated Code of Virginia (Va. Code Ann.) in relation to a [REDACTED] 2019 incident. The Applicant pled guilty to the sexual battery charge in [REDACTED] 2020. Va. Code Ann. § 18.2-67.4 provides, in pertinent part, “[a]n accused is guilty of sexual battery if he sexually abuses, as defined in § 18.2-67.10, (i) the complaining witness against the will of the complaining witness, by force, threat, intimidation, or ruse. . .” The statute does not reference an age requirement for the victim.

The Director incorrectly described Va. Code Ann. § 18.2-67.4 as sexual battery of a child under 15 years of age. The Director listed section 212(a)(2)(A) and section 212(h) of the Act and determined that the Applicant established that his U.S. citizen spouse would experience extreme hardship if he were removed from the United States. Next, the Director concluded that the Applicant did not establish that he warrants a favorable exercise of discretion pursuant to 8 C.F.R. § 212.7(d) “which requires exceptional and extremely unusual hardship and exceptional circumstances” and listed his favorable and unfavorable factors in making this determination. However, the Director did not first make a prerequisite finding that the Applicant’s conviction for sexual battery under Va. Code Ann. § 18.2-67.4 was a violent or dangerous crime. Second, the Director did not analyze whether the Applicant established exceptional and extremely unusual hardship or other exceptional circumstances in the analysis of discretion. Therefore, we are remanding the waiver application for the Director to determine whether sexual battery under Va. Code Ann. § 18.2-67.4 is a violent or dangerous crime, whether the Applicant established exceptional and extremely unusual hardship or other exceptional circumstances, and whether he merits a favorable exercise of discretion.

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