U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21881683

Date: JUL. 26, 2022

Motion on Administrative Appeals Office 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), for a crime involving moral turpitude.

The Director of the Nebraska Service Center denied the application. The Director determined that the Applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for a crime involving moral turpitude. The Director also found that the Applicant's conviction for failure to control or report a dangerous fire constituted a conviction for a violent or dangerous crime, as contemplated by 8 C.F.R. § 212.7(d). The Director concluded that the record did not establish extreme hardship to a qualifying relative, or that a favorable exercise of discretion was warranted. The waiver application was denied accordingly. On appeal, we affirmed the Director's determination that the evidence was insufficient to establish extreme hardship to a qualifying relative.

On motion to reopen and reconsider, the Applicant submits additional evidence and maintains that she has established extreme hardship and exceptional and extremely unusual hardship. She also contends that she warrants a favorable exercise of discretion.

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 review, we will dismiss the motions.

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

We may grant a motion that satisfies the above requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The issue on motion is whether the Applicant has shown new facts or evidence sufficient to demonstrate that she merits a waiver of inadmissibility or that our decision was based on an incorrect application of law or policy based on the evidence in the record at the time of the decision. We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Applicant's claims on motion.

A. Extreme Hardship

As previously discussed, to demonstrate eligibility for a waiver of inadmissibility an applicant must demonstrate extreme hardship to a qualifying relative in the event of separation and relocation, unless the applicant can establish that only one scenario, either separation or relocation, would result from denial of admission. The applicant can meet this burden by submitting a statement from a qualifying relative certifying under penalty of perjury that the qualifying relative would relocate or separate if the applicant is denied admission. In our decision to dismiss the Applicant's appeal, we determined that the Applicant's adult son intended to remain in the United States if the Applicant's waiver application was denied and thus, extreme hardship in the event of separation would need to be established. We reviewed the Applicant's claims regarding hardship to her adult son and determined that she had not established extreme hardship to him in the event of separation.

On motion, the Applicant submits an updated statement from her U.S. citizen adult son. He maintains that his mental health condition continues to deteriorate as a result of his mother's absence. He explains that his most recent hospitalization for schizophrenia occurred in January 2021 and was "directly related to [the Applicant's] absence." He further details that he struggles every day with anxiety and depression and his mother's absence exacerbates these issues. He asserts that he can not visit his mother due to the Chinese government's restrictions, and he has not been able to see his mother in several years. The Applicant's adult son also explains that his father recently had a heart attack and is in declining health and as a result, he is not able to care for him and his teenage brother to the same extent, thereby putting pressure on him to take on additional responsibilities while dealing with his exacerbated mental health condition.

In support, the Applicant submits a letter from her fiancé, detailing that he suffered a heart attack over a year ago and has since been diagnosed with congestive heart failure, diabetes, and diabetic retinopathy. As a result, he asserts that he is unable to care for his sons as well as they need and deserve.

The Applicant's adult son's doctor also submits a letter on motion, detailing that while the Applicant's son has been receiving treatment for over five years for schizoaffective bipolar disorder, he has required repeated hospitalizations when his symptoms are uncontrollable. During said periods, his mood is "unpredictable and his judgment significantly impaired." As a result, he is at significant risk during these periods and police have been involved when he has gone missing for long periods of time. The doctor maintains that the absence of his mother has caused "significant additional psychological stress" for his patient and contributed to three psychiatric hospitalizations since his mother's absence. The doctor concludes that if the Applicant were able to reside in the United States, it would be a relief

for his patient and the additional support the Applicant would provide would be "of great benefit to his recovery and hopefully lead to maintained stability in the future."

On motion, the Applicant has established that her sons would experience extreme hardship upon separation were the Applicant unable to reside in the United States. The Applicant has thus established that she is eligible for a waiver of inadmissibility pursuant to section 212(h)(1)(A) of the Act. We now consider whether the Applicant merits a waiver as a matter of discretion.

B. Discretion

The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 299 (BIA 1996). A favorable exercise of discretion is not warranted for applicants who have been convicted of a violent or dangerous crime, except in extraordinary circumstances. 8 C.F.R. § 212.7(d). 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).

On motion the Applicant does not establish that the Director erred in finding that her conviction for failure to control or report a dangerous fire is a violent or dangerous crime. As discussed by the Director, the Pennsylvania statute for which the Applicant was convicted explicitly states that this crime has the potential to be dangerous since it involves the failure to act when a fire is endangering the life or property of another. Moreover, the Affidavit of Probable Cause details that the Applicant's fiancé reported that the Applicant was trying to burn down the residence while she lit a blanket on fire during a domestic dispute. When the blanket did not light fast enough, the Applicant went to the second floor and tried to light the hardwood floor on fire. The affidavit also states that the residence was occupied by the Applicant's fiancé, her adult son, and her juvenile son. We thus concur with the Director that the Applicant's conviction for failure to control or report a dangerous fire is a conviction for a violent and dangerous crime. Therefore, the heightened discretionary standard of 8 C.F.R. § 212.7(d) is applicable in this case.

8 C.F.R. § 212.7(d), which codified for purposes of section 212(h)(2) of the Act the discretionary standard first applied to section 209(c) waivers by the Attorney General in *Matter of Jean,* 23 I&N Dec. 373 (A.G. 2002), limits the favorable exercise of discretion with respect to those inadmissible under section 212(a)(2) of the Act on account 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.

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.

In this case, the Applicant must demonstrate that denial of the application would result in extraordinary circumstances, such as exceptional or extremely unusual hardship to her or her family. While we acknowledge the hardships to the Applicant's sons, as detailed above, the record does not clearly demonstrate exceptional and extremely unusual hardship, as required. The record establishes that the Applicant's sons have a support network in the United States, including their father, grandmother, uncle, and aunt. We also note that despite the Applanates adult son's documented mental health conditions, he is receiving mental health treatment for his condition, was able to graduate from college, and intends to continue his studies in a Ph.D. program while also working. Furthermore, the record indicates that the Applicant's sons' father is gainfully employed, and reported in his 2021 statement that he earned over $600,000 per year. The record does not establish that he is unable to obtain additional care for his sons during their mother's absence. Nor does the record establish that he and his sons are unable to travel abroad to visit the Applicant. Further, the record does not establish the specific hardships the Applicant is experiencing while residing in her native country. Based on the evidence in the record, we find that the Applicant has not established extraordinary circumstances that would warrant a favorable exercise of discretion.

In summary, the Applicant has been found inadmissible for a conviction for a crime involving moral turpitude that is also a violent and dangerous crime, and she has not demonstrated extraordinary circumstances that warrant a favorable exercise of discretion. The Applicant is consequently ineligible for a waiver of his inadmissibility under section 212(h) of the Act.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.