U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 09967618

Date: MARCH 10, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h), for his conviction of a crime involving moral turpitude (CIMT) – specifically, assault by dangerous weapon and assault and battery.

The Director of the Nebraska Service Center denied the waiver application on the ground that the Applicant did not establish (1) that he had been rehabilitated and that his admission into the United States would not be contrary to the national welfare, safety, or security of the United States, or (2) that any qualifying relative would experience extreme hardship if his waiver application is denied.

On appeal the Applicant asserts that the offenses for which he was convicted do not constitute categorical CIMTs, do not make him inadmissible to the United States, and therefore do not necessitate a waiver of criminal inadmissibility. The Applicant also asserts that he has been rehabilitated since his conviction in 1997. Finally, the Applicant asserts that he has four qualifying relatives who have suffered, and continue to suffer, extreme hardship as a result of the Applicant's deportation from the United States in 1999 and his ongoing absence from their lives.

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.

II. ANALYSIS

The record indicates that the Applicant, a native of Haiti, entered the United States without inspection in 1985, obtained refugee status in 1987, and adjusted his status to lawful permanent resident on December 1, 1990. On [redacted] 1997, the Applicant was convicted in Massachusetts of two offenses committed in [redacted] of that year – assault and battery as well as assault by a dangerous weapon under chapter 265, sections 13A(a) and 15A(b) respectively, of the Massachusetts General Laws. The Applicant was sentenced to two and one half years in prison, was deported to Haiti in 1999, and has resided there ever since. The record shows that the Applicant has four qualifying relatives in the United States, including his lawful permanent resident wife, two U.S. citizen children (a daughter and a son), and his U.S. citizen mother.

The Applicant filed the Form I-601 for a waiver of his criminal inadmissibility in July 2018. The Director denied the waiver application on October 11, 2019. In the decision the Director stated that the Applicant had been convicted of a CIMT, making him inadmissible to the United States. The Director indicated that the Applicant did not qualify for a waiver under section 212(h)(1)(A) of the Act because, although the offenses for which he was convicted occurred more than 15 years before the instant application, as required by subsection (i), the Applicant provided no evidence that his admission to the United States would not be contrary to the national welfare, safety, or security of the United States, or that he had been rehabilitated, as required by subsections (ii) and (iii). The Director also indicated that a statement by the Applicant's daughter describing how she and her brother missed having their father in their lives and how the Applicant's wife and mother feared for his safety in Haiti was insufficient to demonstrate that any of those qualifying relatives would experience serious health, financial, emotional, or any other type of hardship that would amount to extreme hardship, as required for a waiver under section 212(h)(1)(B) of the Act.

On appeal the Applicant contends that the offenses for which he was convicted in Massachusetts -- assault and battery and assault by a dangerous weapon – were not CIMTs. As such, the Applicant claims he would not be obliged to file a waiver of criminal admissibility to seek admission to the United States.

The Applicant cites the Board of Immigration Appeals (Board) decision in *Matter of Sejas*, 241 I&N Dec. 236, 241 (BIA 2007), for the proposition that the crime of assault and battery in Massachusetts has commonly been held not to involve moral turpitude. In *Matter of Sejas* the Board ruled that a Virginia assault and battery statute was not categorically a CIMT because it did not require the actual infliction of physical injury and could include any touching, however slight. *Sejas* does not correlate to the case at hand, however, because the Applicant's convictions in Massachusetts included the crime of assault by a dangerous weapon, which adds the element of a weapon not present in Virginia's assault and battery statute.[1]

The Applicant also cites *Coelho v. Sessions*, 864 F.3d 56 (1st Cir. 2017), in which the First Circuit Court of Appeals remanded a case to the Board for further consideration of whether a 1996 conviction in Massachusetts of assault and battery with a dangerous weapon was a CIMT. The court noted that under Massachusetts common law the crime could be committed by either intentional conduct or reckless conduct, and remanded for the Board to consider whether conviction of assault and battery with a dangerous weapon under the Massachusetts statute based on reckless conduct constituted a CIMT and whether the defendant was convicted based on intentional or reckless conduct.

In the present case, the Applicant was convicted of assault by a dangerous weapon under chapter 265, section 15A(b), of the Massachusetts General Laws. While the Applicant cites to the distinction between reckless and intentional conduct, the record of conviction does not indicate that he was convicted of reckless, as opposed to intentional, assault.

The Applicant next claims that even if his conviction was for a CIMT, he qualifies for a waiver under section 212(h)(1)(A) of the Act because it was more than 15 years ago and he has been rehabilitated. In a sworn statement submitted with the appeal the Applicant indicates that he "accept[s] full responsibility for all of my actions that led to my conviction and deportation," that he has been a law-abiding person since then, and that he is gainfully employed "whenever possible" in Haiti. As evidence of his alleged rehabilitation the Applicant submits a copy of a Haitian police certificate which, according to the Applicant, shows that he has not committed any crime since his 1997 conviction in Massachusetts for which he was deported. The subject police certificate, however, does not state what the Applicant claims it does. The referenced document, issued by the National Police of Haiti, Directorate of the Judicial Police, Judicial Information Office, dated August 20, 2019, simply states that the Applicant was born in Haiti in 1967, that he is registered in the file of the Central Directorate of the Judicial Police, and that he was deported from the United States in 1998 [actually 1999] for armed assault. The certificate provides no information concerning the Applicant's criminal

[1] As a general rule, simple assault or battery is not deemed to involve moral turpitude. *See Matter of Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996). However, assault or battery offenses involving some aggravating dimension, such as the use of a deadly weapon or serious bodily harm, have been found to be crimes involving moral turpitude. *See e.g., Matter of Goodalle*, 12 I&N Dec. 106 (BIA 1967) (second degree assault with a knife); *Matter of Medina*, 15 I&N Dec. 611 (BIA 1976) (assault with a deadly weapon).

record, or the lack thereof, during the two decades he had resided in Haiti since his deportation. As further evidence of his alleged rehabilitation the Applicant submits a letter from the parish priest of a church in [redacted], Haiti, dated August 16, 2019, stating that the Applicant is a member of the parish community and a responsible person. Like the police certificate, the church letter provides no information about the Applicant's life in Haiti during the two decades since his deportation from the United States. It does not establish that his admission would not be contrary to the national welfare, safety, or security of the United States, and that the Applicant has been rehabilitated. Thus, the evidence submitted by the Applicant on appeal is insufficient to establish his rehabilitation since his CIMT conviction in 1997. Accordingly, the Applicant has not established that he qualifies for a waiver of his criminal inadmissibility under section 212(h)(1)(A) of the Act.

Finally, the Applicant claims that he qualifies for a waiver under section 212(h)(1)(B) of the Act because all four of his qualifying relatives in the United States – his wife (born in 1966), his mother (born in 1933), and his two children (born in 1991 and 1997) – will suffer extreme hardship of a financial, medical, emotional, and mental nature if he remains in Haiti, absent from their lives. As evidence of these alleged hardships the Applicant submits statements from each of his qualifying relatives. The Applicant's wife confirms that she has no intention of relocating to Haiti. She states that she worries about her husband's safety because of the crime situation in Haiti, which exacerbates her high blood pressure and diabetes, that she worries about her husband's diabetes as well and the financial strain of refilling his medication, and that the family cannot visit him in Haiti due to the country's unstable condition and the travel costs. The Applicant's mother states that she used to travel to Haiti to visit her son but that her advancing age makes such travel increasingly difficult. Echoing the concerns of the Applicant's wife, his mother states that she worries her son won't have sufficient food or medical care for his diabetes and high blood pressure due to the social dislocations and substandard health care system in Haiti, as well as his trouble finding steady work and getting paid. The Applicant's daughter states that she has suffered from her father's absence since she was a young girl, and fears that his continuing absence will cause lasting damage in her life. Confirming the anguish of her mother and grandmother due to the Applicant's longtime absence, the Applicant's daughter indicates that she shares all of the worries described by her mother and grandmother about her father's health, safety, and financial situation in Haiti due to the poor conditions in that country. Lastly, the Applicant's son states that his father's absence has left a "huge void" in the family, and after missing all of his growing up experiences he hoped that his father would be able to attend his college graduation the following year and be present in his adult life. Evidence submitted on appeal includes assorted documents relating to the medical conditions, employment income, household expenses, and other living costs of the Applicant's wife, monthly earnings statements of the Applicant's daughter, and the medical condition of the Applicant's mother including a statement from her physician advising that she has multiple medical conditions which preclude her from flying to Haiti. Also submitted on appeal is a copy of the Department of State's Haiti 2018 Human Rights Report.

While we are sympathetic to the family's circumstances, we determine that the record is insufficient to show that any of the Applicant's qualifying relatives would experience hardships, either individually or collectively, which rise beyond the common results of removal or inadmissibility to the level of extreme hardship if the Applicant's waiver application is denied and he remains in Haiti. The documentation submitted on appeal does not show the overall financial situation of any of the Applicant's qualifying relatives, and does not indicate that any of them are directly affected financially

by the Applicant's absence, especially since he has been in Haiti for 23 years. There is some documentation of the medical ailments (including diabetes and other conditions) of the Applicant, his wife, and his mother, but no specific evidence that these conditions are particularly debilitating or cannot be treated and paid for in Haiti and the United States, respectively. The Applicant's children are adults, the daughter employed and the son in college as far as the record shows, and there is no evidence that either is suffering financial hardship due to their father's absence in Haiti. Though all of the qualifying relatives express various degrees of emotional and/or mental distress due to the Applicant's absence from their lives and their worries about his safety, health, and overall well-being in Haiti, the record does not show that they cannot stay in contact with him, or that they are unable to visit him in Haiti. Furthermore, the record does not show that the Applicant is a particular target for violence in Haiti or that he is unable to support himself in Haiti. We conclude, therefore, that the Applicant has not established that any of his qualifying relatives will experience extreme hardship of a financial, medical, mental, or emotional nature, even if such hardships are aggregated, if his waiver application is denied and he remains in Haiti. Accordingly, the Applicant has not established that he qualifies for a waiver of his criminal inadmissibility under section 212(h)(1)(B) of the Act.

Moreover, even if we determined that the Applicant established his eligibility for a waiver of his criminal eligibility under section 212(h)(1)(A) or section 212(h)(1)(B) of the Act, which we do not, the burden would still be on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *See 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).[2] While the Director does not appear to have considered whether the Applicant's conviction for assault by deadly weapon and assault and battery constituted a violent or dangerous crime, from the nature of the offense it would seem that it does, in which case the heightened discretionary standard of 8 C.F.R. § 212.7(d) would apply. Exceptional and extremely unusual hardship "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *See 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

[2] 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) [*see also Cisneros v. Lynch*, 834 F.3d 857, 865 (7th Cir. 2016); *Matter of Dominguez-Rodriguez*, 26 I&N Dec. 408, 413 n.9 (BIA 2014)]. The words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not defined in 8 C.F.R. § 212.7(d), and we are aware of no precedent decision or other authority containing a definition of these terms as used in the regulation. We therefore interpret the phrase "violent or dangerous crimes" in accordance with the plain or common meaning of its terms. Black's Law Dictionary (11th ed. 2019), 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." There is no requirement that physical force must have been used or that a firearm must have been involved.

and extremely unusual hardship might still be insufficient to grant the immigration benefit as a matter of discretion).

III. CONCLUSION

As discussed in the foregoing analysis, the Applicant has not established that he is eligible for a waiver of his criminal inadmissibility under section 212(h)(1)(A) or (B) of the Act.

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). The Applicant has not done so in this appeal.

ORDER: The appeal is dismissed.