U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20449838

Date: MARCH 31, 2022

Appeal of Nebraska Service Center 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 having been convicted of a crime involving moral turpitude. The Director of the Nebraska Service Center denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant's conviction for assault in the third degree was for a violent or dangerous crime and that he did not merit a favorable exercise of discretion. The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and asserts that the Director erred in determining that he did not merit a favorable exercise of discretion. We review the questions raised 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 dismiss the appeal.

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, 8 U.S.C. § 1182(a)(2)(A)(i). 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. A waiver is available if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. Where the activities resulting in inadmissibility occurred more than 15 years before the date of the application, a waiver is available if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the foreign national has been rehabilitated. Section 212(h)(1)(A) of the Act.

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). 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-Moralez, 21 I&N Dec. 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 would not be enough to warrant a favorable exercise of discretion. See Matter of Jean, 23 I&N Dec. 373, 383 (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).

II. PROCEDURAL HISTORY

The record reflects that the Applicant entered the United States without authorization in [redacted] 2000 and was apprehended shortly thereafter. The Applicant was ordered removed in [redacted] 2001. A subsequent appeal was dismissed by the Board of Immigration Appeals (Board) in April 2002. The Applicant then submitted an appeal to the United States Court of Appeals for the Second Circuit (Second Circuit). The Second Circuit remanded the case to the Board, vacated the April 2002 decision, and ordered the Board to reconsider their decision. In August 2004, the Board sustained the removal order, and in April 2007, the Second Circuit denied the Applicant's petition for review. In 2009, the Applicant was removed from the United States.

A consular officer of the U.S. Department of State determined that the Applicant was inadmissible for having committed a crime involving moral turpitude based upon his 2002 conviction for assault in the third degree, in violation of section 53a-61 of the Connecticut General Statutes Annotated (Conn. Gen. Stat. Ann.), for which he was sentenced to nine months in jail, with execution suspended, and 18 months of probation. The Director subsequently found, and the record supports, that the Applicant had established extreme hardship to his U.S. citizen parents.[1] However, the Director concluded that the Applicant's crime was for a violent or dangerous crime, and he had not established that he met the heightened discretionary standard in 8 C.F.R. § 212.7(d).

We remanded a subsequent appeal to the Director, finding that while the Director concluded that the Applicant did not meet the heightened discretionary standard, the Director did not provide an analysis or explanation for the determination or address all of the Applicant's positive factors. Upon reconsideration, the Director denied the application, determining that the claimed hardships did not rise to the level of exceptional and extremely unusual hardship, as required. The Director acknowledged evidence in the record relating to the Applicant's volunteer work in Albania and the apparent absence of a criminal record in Albania; however, because the Applicant did not meet the heightened discretionary standard, the Director concluded that it would serve no purpose for USCIS to consider whether the positive discretionary factors outweighed the negative discretionary factors in

[1] We note here that the activities resulting in the Applicant's inadmissibility occurred more than 15 years before the date of the application, and the Director concluded that the Applicant did not establish that he had been rehabilitated due to a lack of supporting evidence covering the period from 2009 to 2015.

the case. The Director also noted that the Applicant had not submitted a statement explaining the circumstances of his arrest and conviction.

III. ANALYSIS

The issue on appeal is whether the Applicant is eligible for a discretionary waiver under the heightened standard for being convicted of a violent or dangerous crime. Upon de novo review, the Applicant has not established by a preponderance of the evidence exceptional and extremely unusual hardship due to his continued inadmissibility, and he is therefore not eligible for a waiver as a matter of discretion.

As noted above, when a foreign national has been convicted of a violent or dangerous crime, the regulation at 8 C.F.R. § 212.7(d) generally precludes a favorable exercise of discretion except in extraordinary circumstances, which include situations in which the foreign national has clearly established "exceptional and extremely unusual hardship" if the benefit is denied, or situations in which overriding national security or foreign policy considerations exist. In this case, the Applicant does not assert that his case involves national security or foreign policy considerations. Therefore, we must determine if he has clearly demonstrated that denying him admission would result in exceptional and extremely unusual hardship.

In Matter of Monreal-Aguinaga, 23 I&N Dec. 56, 62 (BIA 2001), the 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.

On appeal, the Applicant asserts that if he is denied admission, he and his U.S. citizen parents would experience exceptional and extremely unusual hardship upon continued separation. He asserts that his parents' health is deteriorating, and their hardships have in turn caused him to experience emotional hardship. He also states that he has been offered full-time employment if he were to return to the United States which would allow him to assist his parents financially. In her statement, the Applicant's mother asserts that she has been diagnosed with, and is being treated for, bipolar disorder, major depressive disorder, and generalized anxiety disorder. She states that she has lost her desire to live because she is separated from the Applicant. She further states that she cannot visit the Applicant in Albania because she requires routine care from her mental health team. She explains that as she and her spouse age, they will require more assistance, and they cannot depend on their U.S. citizen daughter because she has her own family, other responsibilities, and health concerns. The record also contains a statement from the Applicant's sister indicating that she and her parents are experiencing emotional and financial hardship as a result of the Applicant's inadmissibility.

On appeal, the Applicant submits the following medical documentation: (1) an October 2021 letter from a behavioral health outpatient clinic indicating that the Applicant's mother has been receiving treatment, including medical management and therapy, for symptoms of bipolar disorder and anxiety disorder since 2016; (2) an October 2021 letter from the Applicant's mother's licensed professional counselor stating that the separation from the Applicant exacerbated his mother's severe depressive disorder and anxiety, and the Applicant's mother will continue to suffer if her son is unable to enter

the United States as the Applicant is a primary support; (3) an October 2021 letter from the Applicant's father's physician stating that the Applicant's father would benefit from having the Applicant live with him as he suffers from chronic vertigo, which prevents him from working or driving, and anxiety for which he has been seeing a therapist since August 2021; and (5) an October 2021 follow-up psychological report related to the Applicant's parents which indicates that the Applicant's mother has progressively become more depressed over the past year, suffers from insomnia, prefers to remain in bed most days, and experiences passive suicidal ideation.[2]

We acknowledge that the mental health and medical documentation in the record indicates that the Applicant's parents, especially his mother, would benefit emotionally if the Applicant lived with them. We are also sympathetic to the emotional and mental health challenges experienced by the Applicant's parents as a result of the continued separation from the Applicant. Nevertheless, we find that the Applicant has not demonstrated that his parents' emotional or physical health requires him to provide them with particular support to manage their conditions. The record reflects that the Applicant's sister currently manages caregiving responsibilities for her parents, including accompanying them to their medical appointments. Further, while the Applicant's mother indicated that her daughter has her own family to take care, the record reflects that the Applicant's sister's children are 23 and 20 years old. Having reviewed the record, we acknowledge the claims of hardship made by the Applicant with respect to his parents; however, the record does not contain sufficient evidence to establish the extent or severity of the claimed hardships to the parents that is necessary in showing exceptional and extremely unusual hardship as required by 8 C.F.R. § 212.7(d).

Further, as noted above, even if an applicant can demonstrate the existence of extraordinary circumstances, depending on the gravity of the applicant's offense, we may still decline to consent to his or her admission as a matter of discretion. Here, the record reflects that although the Applicant was ultimately convicted of assault in the third degree, he was originally charged with sexual assault in the fourth degree in violation of section 53a-73a of the Conn. Gen. Stat. Ann. However, we are unable to consider the nature of the Applicant's actual offense because the record does not contain an arrest report or the record of conviction. In the absence of additional information or documentation which would allow us to properly and fully consider the basis for and specific facts surrounding the Applicant's arrest, there is insufficient evidence to establish that his offense should not be considered as a significant adverse factor in his case or, alternatively, that lesser weight should be accorded to such evidence. We also take notice that the Applicant indicated that the court records related to his conviction were destroyed; however, this fact does not relieve the Applicant of his burden to establish his eligibility for the immigration benefit sought. Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012).

The Applicant has been found inadmissible for a crime involving moral turpitude that is also a violent and dangerous crime, and he 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. The waiver application will therefore remain denied.

[2] The report indicates that the Applicant's father and sister are constantly worried that the Applicant's mother will harm herself because she made a suicide attempt two year ago.

ORDER: The appeal is dismissed.