U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16773325

Date: SEP. 07, 2022

Appeal of San Fernando Valley, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h).

The Director of the Nebraska Service Center denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), concluding that the Applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude (CIMT).[1] The Director additionally held that the Applicant committed a violent or dangerous crime as contemplated in 8 C.F.R. § 212.7(d) and as such, a heightened discretionary standard applied to his application. The Director then found that the Applicant did not meet that standard. On appeal, the Applicant disputes the Director's finding that he had committed a violent and dangerous crime and asserts that he has otherwise established his eligibility for the waiver of inadmissibility.

The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal because the Applicant has not met this burden.

I. LAW

A 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. Section 212(a)(2)(A)(i) of the Act. Individuals found inadmissible under section 212(a)(2)(A)(i) of the Act may seek a discretionary waiver of inadmissibility under section 212(h) 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 noncitizen has been rehabilitated. Section 212(h)(1)(A) of the Act. A

[1] We note that the Director erroneously cited the waiver at section 212(i) of the Act, rather than the waiver at section 212(h) of the Act which are at issue here. We deem the error harmless as the Director otherwise cited the correct waiver provision and assessed the requirements of the waiver correctly.

discretionary waiver is also available if denial of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse, parent, son, or daughter of the noncitizen applicant. Section 212(h)(1)(B) of the Act.

A determination of whether denial of the waiver would result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). 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. *Matter of Ige,* 20 I&N Dec. 880, 882 (BIA 1994).

With respect to the discretionary nature of a waiver, when a noncitizen has been convicted of a violent or dangerous crime, the regulations governing the exercise of discretion are set forth in 8 C.F.R. § 212.7(d), and generally preclude a favorable exercise of discretion except in extraordinary circumstances, including situations in which the noncitizen has established "exceptional and extremely unusual hardship" if the benefit is denied, or in which overriding national security or foreign policy considerations exist. However, even if an applicant demonstrates the existence of these extraordinary circumstances, depending on the gravity of the applicant's offense, consent to their admission as a matter of discretion may still be denied.

II. ANALYSIS

The Applicant was convicted of one felony count of possession of a counterfeit item, a forged check, with intent to defraud under section 475(a) of the California Penal Code (Cal. Penal Code) stemming from an arrest in 1977, and was subsequently sentenced to eight months of jail time and three years of supervised probation. The Applicant was also arrested in 2001 and subsequently convicted of misdemeanor corporal injury to a spouse under 273.5(a) of the Cal. Penal Code, for which he was sentenced to three years of summary probation, 40 hours of non-profit volunteer work, and 52 weeks of a domestic violence rehabilitation program.

The Director found that the Applicant's two above-noted convictions constituted CIMTs that rendered him inadmissible under section 212(a)(2)(A)(i) of the Act. The Applicant does not contest that his convictions constituted CIMTs; however, he asserts that his conviction for corporal injury to a spouse is not for a violent and dangerous crime as the Director found and therefore the heightened discretionary standard under 8 C.F.R. § 212.7(d) does not apply to his case.[2] The Applicant further argues that even if he is subjected to the heightened discretionary standard, his Form I-601 should be approved because his four U.S. citizen children would experience exceptional and extremely unusual

[2] The Applicant also contends that the Director erred in not analyzing his eligibility for the waiver under section 212(h)(1)(A) of the Act based on his rehabilitation and instead, only considered his eligibility under section 212(h)(1)(B) of the Act. However, although the Director's decision did not reference section 212(h)(1)(A) of the Act, the Director's determination that the Applicant had not established that he warranted a favorable exercise of discretion under the heightened standard of 8 C.F.R. § 212.7(d) as required rendered the Applicant ineligible for a section 212(h) waiver under both subsections.

hardship if he is unable to remain in the United States. In addition, he renews his assertion that he is eligible for a waiver under section 212(h)(1)(A) of the Act, as his most recent conviction took place in 2001, more than 15 years ago.

We acknowledge the Applicant's renewed assertions that he is eligible for a section 212(h)(1)(A) waiver based on his claimed rehabilitation. However, even if we were to find him rehabilitated, as discussed below, the Applicant has not overcome the Director's determination that he was convicted of a violent and dangerous crime and he has not demonstrated extraordinary circumstances that warrant a favorable exercise of discretion under the heightened discretionary standard of 8 C.F.R. § 212.7(d) that therefore applies to his waiver application.

A. Violent or Dangerous Crimes

The Director found that the Applicant's conviction under Cal. Penal Code section 273.5(a) constituted a violent and dangerous crime as set forth in 8 C.F.R. § 212.7(d), and the Applicant was therefore subject to a heightened discretionary standard. In 2001, when he was convicted, a violation of this statute occurred when a person "willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition." Cal. Penal Code § 273.5(a) (West 2001).

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."

The Applicant argues on appeal that a violation of the offense for which he was convicted can result from the infliction of a minor wound or injury that is not "serious" and that he was convicted merely of a misdemeanor and no jail term. He also argues that the Director did not consider the specific facts of his conviction in determining whether it involved a violent or dangerous crime, per *Rivas-Gomez v. Gonzales*, 441 F.3d 1072, 1078 (9th Cir. 2006). The court documents in the record indicate that the Applicant pled to and was found guilty of the charge of "willfully. . . .inflict[ing] a corporal injury resulting in a traumatic condition" upon his spouse. The Applicant argues that this language does not indicate that this injury was "serious" and ultimately he was only convicted of a misdemeanor offense. However, he has not provided documentary evidence, such as an arrest report, criminal complaint, or affidavits from individuals with firsthand knowledge of the events, to satisfy his burden in these proceedings to show that the circumstances of his arrest and conviction and the specific acts he committed were not violent or dangerous, and as such, we find his arguments in this regard unavailing.

Further, the Applicant disagrees with the Director's finding that there is no precedent decision defining violent or dangerous crimes and cites *Matter of Jean*, 23 I&N Dec. 373, 383-84 (A.G. 2002), in which the manslaughter of an infant was found to be a violent or dangerous crime, contending that his crime was not comparable to that in *Matter of Jean*. However, the Applicant has not shown that any applicable authority requires that a violent or dangerous crime under 8 C.F.R. § 212.7(d) must be "comparable" to the crime in *Matter of Jean*. Furthermore, contrary to the Applicant's assertion, the cited precedent decision does not include a definition of a violent or dangerous crime; rather, it provided that depending on the severity of the noncitizen's underlying criminal offense, a showing of exceptional and extremely unusual hardship might still be insufficient to grant the immigration benefit as a matter of discretion where the applicant has been convicted of a violent and dangerous crime. *See Matter of Jean*, 23 I&N Dec. at 383-84.

When considering the elements of Cal. Penal Code section 273.5(a), it is clear the Applicant committed a dangerous crime, as conviction requires a showing that an individual "willfully inflicts... corporal injury resulting in a traumatic condition." The willful infliction of bodily injury to another person, particularly that results in "a traumatic condition," is by its nature "dangerous," consistent with the common law definition of the term. We therefore affirm the Director's finding that the Applicant committed a violent or dangerous crime, and the Applicant must therefore establish that he merits the section 212(h) waiver due to extraordinary circumstances for a favorable exercise of discretion.

B. Discretion

We now turn to whether the Applicant merits a favorable exercise of discretion. As noted above, when a noncitizen 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 where the noncitizen 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 his admission would result in exceptional and extremely unusual hardship. 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. at 62.

On appeal, the Applicant does not submit additional evidence. He instead submits a brief and a copy of his previously-submitted 2001 conviction documents and argues that even if he were subject to the heightened standard, he submitted sufficient evidence in support of a favorable exercise of discretion, including evidence of the favorable equities in his case, such as his substantial family ties in the United States and medical concerns of his U.S. citizen children along with his own medical concerns. He further argues that if he is denied admission, his adult U.S. citizen children and grandchildren would experience exceptional and extremely unusual hardship upon separation from him.[3] The Applicant also makes a claim of exceptional and extremely unusual hardship to himself if he is separated from

[3] For a showing of extraordinary circumstances according to 8 C.F.R. § 212.7(d), the Applicant may show hardship to anyone, including himself or relatives such as his grandchildren, who are not qualifying relatives under section 212(h)(1)(B) of the Act. The Director's determination to the contrary is withdrawn.

his children. With his Form I-601, the Applicant submitted statements from his son, R-, and daughter, E-; copies of his relatives' identity documents; family photographs; medical documents related to his daughters, V- and E-, and his granddaughter, K-; a letter from a pastor at his church; and documents regarding his criminal history.

In her statement below, the Applicant's daughter, E-, asserted that she would experience great emotional pain if his waiver is denied. She stated that she is married and her father lives downstairs from them and helps care for her four children. She detailed that her three oldest children's father is absent from their lives and the Applicant has acted as a father figure for her oldest son, who has lived with the Applicant for the last four years. She contended that she loved the Applicant very much and that he provided great support and encouragement for her worries and insecurities. She further described that she has suffered from kidney problems since birth and has kidney stones three times a year, which are stressful and painful and have prompted her to go to the emergency room. She stated that the Applicant has helped keep her strong and prevented her children from seeing her suffering. She asserted that she was not aware of the Applicant's past mistakes and was shocked that the man who helped raise her children could have "done any of those things." Nevertheless, she argued that the Applicant's positive presence in her and her siblings' lives demonstrated his good character. She described the Applicant as her strongest supporter, confidant, and helper and that she would be crushed if his waiver is denied, as she would not be able to travel to see him due to the costs and her family responsibilities. Finally, she expressed concern for the Applicant if he returns to his native Mexico, as he has lived in the United States for decades and does not have family in Mexico and would experience emotional hardship. E- contended that she would also worry about the Applicant's diabetes and its potential to deteriorate if he misses his family and becomes depressed.

In his statement below, the Applicant's son, R-, also detailed the emotional and health-related hardship he contended he would experience if the Applicant's waiver application is denied. In describing the role his father plays in his two sons' lives, he contended that the Applicant takes his grandson to school and soccer practice and is helpful and thoughtful in doing chores around R-'s house. He stated that he has been borderline diabetic and managed to get it under control, but he worries that the stress and anxiety of knowing the Applicant is in another country would result in R- developing diabetes in the future. He expressed his concern for the Applicant's health, particularly his diabetes, and safety if he returns to Mexico.

Having reviewed the record, we acknowledge the evidence of physical and emotional hardship to the Applicant and his family members as a result of his inadmissibility, particularly given the Applicant's advanced age and multiple family ties to the United States (and the lack of such ties in his home country). However, the record does not demonstrate exceptional and extremely unusual hardship, as required by 8 C.F.R. § 212.7(d).

As an initial matter, as the Applicant argues on appeal that he is not required to show exceptional and extremely unusual hardship, he does not provide any new arguments or supporting evidence to overcome the Director's determination that he did not meet this heightened standard. The record includes medical documents related to the Applicant's children and grandchildren, but the submitted evidence does not provide detail about the Applicant's ability to assist with or alleviate the ongoing impact of their medical conditions. We note the claims of the Applicant's children that their conditions would deteriorate if the Applicant is not present to provide them emotional support. However,

although the record includes medical or psychological documentation, they do not set forth how his children's medical diagnoses and their progression impact their lives. Additionally, while we acknowledge the claim that the Applicant would have difficulty living in Mexico, he has not provided supporting evidence, including a personal statement, to substantiate this claim.

As noted above, 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. at 62. The hardships present in the Applicant's case are not so egregious or unusual as to meet the heightened standard of exceptional and extremely unusual hardship required by 8 C.F.R. § 212.7(d).

The Applicant has been found inadmissible for having been convicted of a crime involving moral turpitude that is also a violent and dangerous crime, and he has not demonstrated extraordinary circumstances to warrant a favorable exercise of discretion under the heightened discretionary standard under 8 C.F.R. § 212.7(d) that is therefore applicable to his case. The Applicant is consequently ineligible for a waiver of his inadmissibility under section 212(h) of the Act.

ORDER: The appeal is dismissed.