U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25273405

Date: MAR. 23, 2023

Appeal of Long Island Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

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 Long Island, New York Field Office determined that the Applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude (CIMT) but was eligible for a waiver of inadmissibility pursuant to section 212(h)(1)(A)(i) of the Act. However, the Director denied the application, finding that the Applicant did not merit a favorable exercise of discretion. On appeal, the Applicant submits additional documentation in support of his rehabilitation and asserts that he is eligible for the benefit sought. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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 dismiss the appeal.

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.

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) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). 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. A waiver is also 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.

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, which include situations in which the noncitizen has established "exceptional and extremely unusual hardship" if the benefit is denied, or situations in which overriding national security or foreign policy considerations exist. However, even if an applicant can demonstrate the existence of these extraordinary circumstances, depending on the gravity of the applicant's offense, consent to his or her admission as a matter of discretion may still be denied.

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 record shows that the Applicant was convicted in 1996 for the offense of manslaughter in the second degree in violation of New York Penal Law section 125.15-1. At the time of the Applicant's conviction, New York Penal Law section 125.15 provided, in pertinent part, that a person is guilty of manslaughter in the second degree when he recklessly causes the death of another person. The Director determined that the Applicant had demonstrated eligibility for a waiver of inadmissibility pursuant to section 212(h)(1)(A) of the Act. Nevertheless, the Director denied the waiver application, finding that the Applicant committed a violent or dangerous crime as contemplated in 8 C.F.R. § 212.7(d) and did not meet the heightened discretionary standard of exceptional and extremely unusual hardship. On appeal, the Applicant contests the Director's finding that his conviction is for violent or dangerous crime which subjects him to a heightened discretionary standard.

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS,* 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS,* 87 F3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case.")

The Applicant argues on appeal that a person is guilty of New York Penal Law section 125.15-1 if the person recklessly causes the death of another person and because he did not intend to use, attempt to use, or threaten to use physical force against another person, it is not a crime of violence and does not meet the definition of violent. Here, though, we are not determining whether the Applicant's convictions meet the generic, federal definition of a "crime of violence," but whether they are violent

or dangerous crimes under 8 C.F.R. § 212.7(d). This is a discretionary determination, and as such, we may review the statutory elements of the crime and the nature of the underlying offense. *Torres-Valdivias v. Lynch,* 788 F.3d at 1152. As detailed by the Director and uncontested on appeal, the Applicant was driving over the speed limit in an unregistered car with brakes he believed were faulty. He lost control of the car, swerved, hit a parked car, and struck two young girls on the sidewalk before crashing into a wall. The younger girl died, while the elder girl suffered several broken bones, lacerations, and an extended hospital stay. The plain meaning of the Applicant's ultimate conviction of manslaughter in the second degree of "recklessly caus[ing] the death of another person" connotes by its nature that the Applicant's conduct involved violence and danger. The Applicant must therefore establish extraordinary circumstances for 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 in which 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. 56, 62 (BIA 2001).

On appeal, the Applicant asserts that if he is denied admission, he and his mother would experience exceptional and extremely unusual hardship. In support of this assertion, he references documentation previously reviewed and considered by the Director in rendering the decision to deny the application. The Applicant does not submit documentation on appeal to address the deficiencies raised by the Director with respect to exceptional and extremely unusual hardship. The Applicant has thus not established on appeal that he meets the exceptional and extremely unusual hardship standard.

The Applicant has been found inadmissible for a crime of 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.

ORDER: The appeal is dismissed.