U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25785396

Date: May 22, 2023

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), based on a conviction for a crime involving moral turpitude (CIMT). He applied for a waiver of inadmissibility under section 212(h) of the Act to adjust status to that of a lawful permanent resident in the United States.

The Director of the Nebraska Service Center denied the waiver request, concluding that the Applicant did not establish that refusal of admission would cause extreme hardship to his U.S. citizen parents. The matter is now before us on appeal. 8 C.F.R. § 103.3.[1] On appeal, the Applicant only contests the finding of inadmissibility. The Applicant does not contest the Director's finding that he did not meet his burden of proving his qualifying relatives would suffer extreme hardship.

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.

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)(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 discretionary 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 discretionary 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.

[1] Previously, the Director denied the waiver on the additional ground of public charge for which no waiver is available. The Applicant appealed the public charge finding to the AAO. The AAO withdrew the public charge finding and remanded the case to the Nebraska Service Center so that the Applicant could apply for a waiver of inadmissibility based on his CIMT conviction.

If a foreign national demonstrates their eligibility under section 212(h)(1)(A) or (B) of the Act, USCIS must then decide whether to exercise its discretion favorably and consent to the foreign national's admission to the United States. Section 212(h)(2) of the Act. 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 (A.G. 2002) (providing that if 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).

We adopt and affirm the Director's well-reasoned decision and find the Applicant is inadmissible based on his conviction for a CIMT. 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 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On [redacted] 2017, the Applicant was convicted of Intentionally Causing Grievous harm in violation of Section 98(1) of Criminal Code, Chapter 3.01 of the Revised Laws of St. Lucia 2008, which reads:

> Any person who intentionally causes grievous harm to any to any other person is liable on conviction on indictment to imprisonment for ten years or on summary conviction to imprisonment for three years.

The Applicant's argument turns on the definition of "grievous harm" which Section 6(1) of Criminal Code, Chapter 3.01 of the Revised Laws of St. Lucia 2008 which defines as:

> Any harm which amounts to a maim or dangerous harm or which seriously or permanently injures the health, or which is likely so to injure health, or which extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, limb or faculty.

The Applicant asserts that since the statutory definition of "grievous harm" includes harm which "is likely so to injure health," the statute therefore does not require a resulting physical injury as its minimum contact. The Applicant contends that "[g]iven that the statute does not require a resulting physical injury, it would not be classified as a CIMT…" The Applicant analogizes the crime of conviction to a simple assault which is generally not a CIMT. Simple assault requires general intent only and may be committed without the evil intent, depraved or vicious motive, or corrupt mind associated with moral turpitude. Matter of Solon, 24 I. & N. Dec. 239, 241 (BIA 2007)

We reject the Applicant's reading of the statute. Upon de novo review, we find that the plain language of the clause "is likely so to injure health" in the definition of "grievous harm" refers back to the previous clause and encompasses an attempt to intentionally cause "[a]ny harm which amounts to a maim or dangerous harm or which seriously or permanently injures the health." The inchoate form of the crime of Intentionally Causing Grievous is encompassed in the conviction statute. As set forth above, an attempt or conspiracy to commit a CIMT renders the actor inadmissible. Section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i). Thus, the statute of conviction is a CIMT and the finding of inadmissibility is proper and the Applicant has not met his burden to establish that the ground of inadmissibility does not apply.

In addition, contrary to the Applicant's claim, we find that the statute of conviction is not ambiguous and does not require application of a fact-based categorical approach. Therefore, we need not examine the presence or absence of aggravating and mitigating factors pursuant to Matter of Sanudo, 23 I&N Dec. 968, 971-72, as the Applicant urges. The statute of conviction is for the intentional cause or attempt to cause grievous harm and does not encompass a simple assault and battery as discussed in Matter of Sanudo, thus it is not appropriate to examine the facts underlying the conviction.

In light of the foregoing, the crime of conviction is a CIMT and the Applicant is inadmissible.

ORDER: The appeal is dismissed.