



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 18182592

Date: JAN. 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 sections 212(a)(9)(B)(v) and (h) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(v) and (h).

The Director of the Nebraska Service Center denied the application, concluding that the Applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having resided unlawfully in the United States for an uninterrupted period of at least one year. The Director also concluded that the Applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act as someone who had been convicted of at least one crime involving moral turpitude (CIMT). The Director additionally held that the Applicant committed violent or dangerous crimes as contemplated in 8 C.F.R. § 212.7(d) and as such he must be held to a heightened standard of exceptional and extremely unusual hardship. Despite finding that the Applicant met that standard, the Director denied the application, concluding that an exercise of favorable discretion was not warranted because the Applicant's 21 years of unlawful U.S. presence and his convictions of crimes that were deemed violent and dangerous outweighed the favorable factors in his case.

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 under section 212(a)(2)(A)(i) of the Act and may seek a discretionary waiver of inadmissibility under section 212(h) of the Act.¹

¹ A discretionary waiver is available if an applicant's criminal activities occurred more than 15 years ago and the applicant shows that their admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and that they have been rehabilitated. Section 212(h)(1)(A) of the Act. Alternatively, a waiver is available if the Applicant demonstrates that 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. Although the Applicant is required to meet only one of these statutory requirements, the Director determined that he met both and therefore issued a denial as a matter of discretion.

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.

On appeal, the Applicant challenges the Director’s decision, asserting that the record contains “substantial evidence” in contradiction to the Director’s conclusion, which the Applicant argues was an abuse of discretion. The Applicant further contends that the Director “failed to properly analyze all of the favorable factors” prior to denying the waiver on the basis of discretion.

Upon *de novo* review, we conclude that the Director did not provide a sufficient explanation of the basis for the denial of the Applicant’s waiver application consistent with regulatory criteria. See 8 C.F.R. § 103.3(a)(1)(i).

Although the Director stated that the Applicant’s submissions had been considered and that both favorable and unfavorable factors in the Applicant’s case had been duly weighed, the denial lacks a sufficient analysis of, or even a reference to, the favorable factors weighed, thereby neglecting to clarify precisely which, if any, of the favorable factors the Director considered. Furthermore, the Director’s statement that the Applicant’s “violent and dangerous criminal acts are a profound unfavorable factor that has been fully mitigated by the favorable factors presented” appears to be a contradiction to the Director’s conclusion that favorable discretion is not warranted in this case. While the latter may be true, the Director must fully explain the reasons for denying an application in order to allow the Applicant a fair opportunity to contest the decision and enable this office an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that an Immigration Judge must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Because the Director did not list or discuss the favorable factors that were considered, the basis for the discretionary denial of the waiver application remains ambiguous and unclear. In addition, although the Director affirmatively concluded that “extraordinary circumstances exist in the form of exceptional and extremely unusual hardship,” it is unclear which evidence the Director relied upon to reach this conclusion.

In light of deficiencies discussed above, we hereby withdraw the Director’s decision and remand the matter for further consideration of the Applicant’s eligibility for a waiver. If a determination is made that the Applicant is not eligible for a waiver, the Director shall issue a new decision containing a more comprehensive and proper analysis of the evidence and an explanation of the basis for denial of the waiver application.

ORDER: The Director’s decision is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.