U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28322628

Date: DEC. 6, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of Vietnam currently residing in that country, has applied for an immigrant visa. A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for a crime involving moral turpitude and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, or because the activities for which the noncitizen is inadmissible occurred at least 15 years ago, if the noncitizen's admission would not be contrary to the national welfare, safety, or security of the United States and the noncitizen has been rehabilitated.

The Director of the Nebraska Service Center denied the application in March 2021, concluding that the record did not establish that the Applicant had rehabilitated or that his qualifying relative would experience extreme hardship. The Applicant appealed the decision and we remanded to the Director for a consideration of new evidence of rehabilitation. The Director denied the application a second time in April 2023 because the Applicant had not established exceptional and extremely unusual hardship under 8 C.F.R. § 212.7(d). The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant argues that he has met the exceptional and extremely unusual hardship discretionary standard required based on his Lawful Permanent Resident (LPR) mother's medical and emotional 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.

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. A discretionary waiver is available if the activities for which the noncitizen is inadmissible occurred at least 15 years ago, if the noncitizen's admission 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 discretionary waiver is also available if denial of admission would result in extreme hardship to the noncitizen's U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. A noncitizen who establishes statutory eligibility for a waiver under section 212(h)(1)(A) or (B) of the Act must also demonstrate that USCIS should favorably exercise its discretion and grant the waiver.

The regulation at 8 C.F.R. § 212.7(d), however, limits the favorable exercise of discretion with respect to those inadmissible under section 212(a)(2) of the Act on account of a violent or dangerous crime. Specifically, the regulation at 8 C.F.R. § 212.7(d) provides that USCIS may not favorably exercise discretion under section 212(h)(2) of the Act in the case of an applicant that was convicted of a violent or dangerous crime, except in extraordinary circumstances, such as cases involving national security or foreign policy considerations, or where the applicant clearly demonstrates that the denial would result in exceptional and extremely unusual hardship. *Id.* Moreover, depending on the gravity of the underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion pursuant to section 212(h)(2) of the Act. *Id.*

II. ANALYSIS

The Director determined that the Applicant qualified for a waiver under section 212(h)(1)(A) of the Act because 15 years had elapsed since the offense took place and he has shown rehabilitation and reformation of character. However, the Director denied the application after concluding that the combined medical and emotional hardship experienced by the Applicant's LPR mother did not rise to the level of exceptional and extremely unusual hardship required for perpetrators of violent and dangerous crimes. On appeal, the Applicant states that his mother's emotional and medical situation constitutes exceptional and extremely unusual hardship, that the decision of the Director was arbitrary, capricious and an abuse of discretion, and that the Director violated the Applicant's constitutional rights by not considering all of the evidence presented in favor of his hardship claim.

In our previous decision, we determined that the Applicant was convicted of a violent and dangerous crime rendering him inadmissible under section 212(a)(2)(A)(i) of the Act. The Applicant continues to assert that he was not a willing participant in the offense and therefore should not be found to have committed a violent or dangerous crime. The Applicant's arguments were addressed in our prior decision, and we incorporate our previous finding on the matter here, by reference.

A favorable exercise of discretion is not warranted for applicants who have been convicted of a violent or dangerous crime, except in extraordinary circumstances. 8 C.F.R. § 212.7(d). The words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation or case law. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002) (explaining that defining and applying the "violent or dangerous crime" discretionary standard is distinct from determination that a crime is an aggravated felony). Pursuant to our discretionary authority, we understand "violent or dangerous" according to the ordinary meanings of those terms. Black's Law Dictionary (9th ed. 2009),

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." 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).

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).

The Applicant has submitted no additional evidence of hardship on appeal. Rather, he argues that the Director incorrectly assessed the evidence submitted with his request for a waiver. Upon de novo review, we conclude that the Applicant has not met his burden of proof to establish exceptional and extremely unusual hardship.

When assessing exceptional and extremely unusual hardship, it is useful to view the factors considered in determining the lower standard of extreme hardship. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62-64 (BIA 2001) (discussing exceptional and extremely unusual hardship factors in the context of cancellation of removal under section 240A(b) of the Act, 8 U.S.C. 1229b(b)). Factors deemed relevant in determining whether a foreign national has established the lower standard of extreme hardship include the presence of a lawful permanent resident or United States citizen qualifying relative in this country; the financial impact of departure from this country; and the age, health, and circumstances of qualifying relatives. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). 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).

"As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship." *Matter of Monreal-Aguinaga*, 23 I&N Dec. at 62. Exceptional and extremely unusual hardship, however, "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *Id.* While a fact pattern that is common and not substantially different from the hardships which would normally be expected upon removal might be adequate to meet the "extreme hardship" standard, these are not the types of hardship that would meet the significantly higher "exceptional and extremely unusual

hardship" standard. *Matter of Andazola-Rivas*, 23 I&N Dec. 319 (BIA 2002) (discussing exceptional and extremely unusual hardship factors in the context of cancellation of removal under section 240A(b) of the Act.)

The Applicant states that his mother's health would be adversely affected both if they were to remain separated and if his mother were to relocate to Vietnam. In support of this statement, he has provided medical records from Vietnam showing prescriptions and information regarding prescription drugs received in the United States. While the prescriptions show that the Applicant's LPR mother has seen a doctor and may benefit from medication, it does not establish that she has a condition or conditions which would prevent her from living abroad or would specifically require the care of the Applicant. We acknowledge the country conditions report from S-C-[1] as it relates to the availability of medical care in Vietnam. However, the medical documents provided from Vietnam directly contradict the Applicant's statement that his mother would be unable to receive treatment abroad, as she appeared to be receiving treatment up until she emigrated. We acknowledge that the Applicant's mother has claimed to be managing diabetes and high blood pressure, but the record lacks evidence of a diagnosis from a medical professional or any indication from a physician of the severity of the ailments afflicting the Applicant's mother. It is the Applicant's burden to provide documentary evidence to support the claims made in support of his application. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

In addition to the stated medical concerns, the Applicant states that his mother's mental health has suffered since they were separated. In support of this statement the Applicant provided a psychological evaluation from Dr. W-. In the evaluation, Dr. W- states that the Applicant's mother showed symptoms of major depressive disorder and post-traumatic stress disorder stemming from her experiences during the Vietnam war. The psychological evaluation was conducted in April 2020 and the Applicant has not provided any additional information related to his mother's mental health since that initial evaluation. In addition to his diagnosis of the Applicant's mother, Dr. W- states that the Applicant's sister is also experiencing symptoms of major depressive disorder related to her guilt surrounding her brother being unable to come to the United States with their mother. We acknowledge the findings of Dr. W- as they relate to the hardship faced by the Applicant's family members due to separation and relocation, however, we conclude that the aggregate psychological and medical factors, when reviewed individually and cumulatively, are insufficient to meet the significantly higher standard of exceptional and extremely unusual hardship. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. at 62.

Having reviewed the record, we acknowledge the claims of hardship made by the Applicant with respect to his mother. Although the Director found that the Applicant's mother will experience hardship, the record does not contain sufficient evidence to establish the extent or severity of the claimed hardships to the mother that is necessary in showing exceptional and extremely unusual hardship required by 8 C.F.R. § 212.7(d). Although the Applicant may also establish exceptional and extremely unusual hardship to himself, he has not made any claims or submitted evidence concerning hardship that he would experience if his waiver application were denied.

The Applicant has been found inadmissible for crimes involving moral turpitude that are also violent and dangerous crimes, and he has not demonstrated extraordinary circumstances that warrant a

[1] We use initials to protect the privacy of individuals.

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.