U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28487304

Date: Nov. 13, 2023

Appeal of Cincinnati, Ohio Field Office Decision

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

The Applicant, a native and citizen of India currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR) and seeks a waiver of inadmissibility for crimes involving moral turpitude under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h) and for fraud and misrepresentation under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Director of the Cincinnati, Ohio Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding the Applicant was subject to a heightened discretionary standard because he was convicted of a violent or dangerous crime, and did not merit a favorable exercise of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Applicant does not contest that he is inadmissible under sections 212(i) and (h) of the Act and concedes that the 2010 convictions in the Cayman Islands for assault causing grievous bodily harm and two counts of assault causing actual bodily harm qualify as violent or dangerous crimes under 8 C.F. R. § 212.7(d). Instead, the Applicant disputes the determination that the evidence, considered cumulatively, does not demonstrate exceptional and extremely unusual hardship if he is denied admission, and asserts that he merits a favorable exercise of discretion.

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

Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure admission into the United States is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). This inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or LPR spouse or parent. Section 212(i) of the Act.

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. A discretionary waiver is available if the activities occurred more than 15 years before the date of the application 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, or 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)(A), (B) of the Act. Finally, if a foreign national demonstrates their eligibility under section 212(h)(1) 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.

With respect to the discretionary nature of a waiver, the burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted). However, 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 depending on the gravity of the foreign national'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).

II. ANALYSIS

The Applicant applied to adjust status to that of an LPR in 2017. USCIS denied his application after the Applicant did not respond to a request for evidence for information on the arrests that occurred in the Cayman Islands. In a motion to reopen, the Applicant submitted the requested information, but USCIS declined to reopen the application. The Applicant applied a second time to adjust status to that of an LPR in 2019. On this application, he acknowledged that he had previously misrepresented his lack of criminal convictions and provided documentation on the criminal matters in the Cayman Islands. USCIS issued a notice of intent to deny (NOID) as the Applicant appeared inadmissible for fraud and misrepresentation and for having committed a crime involving moral turpitude (CIMT). In response, the Applicant filed the instant waiver application. After review, the Director denied the waiver, concluding the Applicant was inadmissible for fraud or misrepresentation for failing to disclose the 2010 convictions in his first adjustment of status application and for a CIMT because of the convictions in the Cayman Islands.

The Director further determined that because the Applicant's criminal history in the Cayman Islands was violent and dangerous in nature, and he did not establish that denial of the waiver application would cause hardship rising to a level that is exceptional and extremely unusual, the Applicant was not eligible for a favorable exercise of discretion under 8 C.F.R. § 212.7(d).

The Applicant appealed the Director's decision. On appeal, the Applicant contends that the Director erred in not considering the hardships to the Applicant's spouse in the aggregate. In support of the hardship claims, the Applicant submitted his marriage certificate and birth certificates for his spouse and two U.S. citizen daughters, the Form I-130, Petition for Alien Relative approval notice, statements from the Applicant and his spouse, affidavits from family and friends, the spouse's psychological evaluation, monthly budget, debit information and bills, the spouse's piano lesson invoices, 2019 tax documents, the Applicant's criminal records, country condition documents for India, and family photos.

Upon de novo review and considering the totality of the evidence in the aggregate, the Applicant has not established that the denial of the waiver application would result in exceptional and extremely unusual hardship and therefore the Applicant has not established that he merits a favorable exercise of discretion.

When a foreign national 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 foreign national 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 him admission would result in 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 U.S. 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).

The Applicant asserts that his spouse's mental health would deteriorate if he were not permitted to remain in the United States. The psychological report submitted with the waiver application indicates his spouse suffers from some symptoms of depression but that her symptoms are not clinically significant. The Applicant has not submitted evidence of whether his spouse is currently undergoing any mental health treatment or how the Applicant's departure from the United States would affect the spouse, especially given that her symptoms are not clinically significant. In the Applicant's statement he explains that his wife has been seeing a psychologist since 2020, however the record lacks evidence of treatment from this doctor. Without more, the evidence does not support that the emotional hardship and any resulting psychological effects of separation would rise to the level of exceptional and extremely unusual hardship.

The Applicant notes that he is the primary wage earner, and his spouse takes care of their two U.S. citizen children. If he were not permitted to remain in the United States, his spouse indicates she would need to work full-time, and their daughters would need to attend day care as her family is not close and cannot assist in caring for their children. The spouse has a college degree in religious studies, assists her spouse in his grant writing and rental property businesses and teaches piano lessons. However, she asserts that she would not be able to manage the rental properties, which generate approximately $2,600 per month, on her own. The Applicant has not submitted evidence detailing why the spouse could not manage the properties or why she would not be able to obtain gainful employment given her college degree and the experience gained in assisting her spouse in his businesses. In the end, although we recognize the loss of income from the Applicant would create some financial hardships, the Applicant has not established that his spouse would be unable to obtain gainful employment or otherwise support the family. We note that the inability to maintain one's present standard of living is a common result of removal and does not amount to exceptional and unusual hardship. *See Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996).

The Applicant also asserts that relocating with his family to India would cause hardship rising to the level of exceptional and extremely unusual. The documents submitted demonstrate there are safety concerns in West Bengal and that there is a lack of religious freedom in India because of anti-conversion laws. Although there are safety concerns in West Bengal and anti-conversion laws in 8 of India's 29 states, these same concerns do not exist throughout India. We also acknowledge the Applicant's claims pertaining to the lower standards of living and related concerns in India. However, the Applicant has not submitted evidence in the record that his spouse's relocation to India would cause more hardship to or be more difficult than others in her circumstances who would also face a lower standard of living, separation from family in the United States, and the adjustments to different social and cultural norms. *See Matter of J-J-G-*, 27 I&N Dec. 808, 813 (BIA 2020) (noting that evidence a qualifying relative will experience a lower standard of living in the country of removal is generally insufficient by itself to support a finding of exceptional and extremely unusual hardship).

Lastly, the Applicant has also submitted information regarding the importance of fathers in the development of children, and the difficulties the Applicant's spouse would face in raising their children without the Applicant or the support of other family members as the spouse's family does not live close. We acknowledge the obstacles to the spouse in raising their children without the Applicant, but he has not submitted into the record evidence that the challenges of raising children in his absence would go beyond that which is expected upon removal.

III. CONCLUSION

Considering the documented the financial, psychological, and emotional hardships in the aggregate, the Applicant's spouse would experience some level of hardship if his waiver were not granted. However, these hardships do not rise to a level that can be considered exceptional and extremely unusual as they are not substantially beyond the ordinary hardships that would be expected upon

removal of a family member.[1] Based on a totality of the evidence, the Applicant has not clearly demonstrated he merits a favorable exercise of discretion because he has not established that the denial of the waiver application would cause exceptional and extremely unusual hardship as set forth in 8 C.F.R. § 212.7(d). The waiver application will remain denied.

ORDER: The appeal is dismissed.

[1] To the extent the Applicant cites to prior non-precedent decisions issued by the AAO in support of his argument that he has established the requisite hardship, we note that non-precedent decisions are not binding on future USCIS adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.