



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

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

In Re: 28744267

Date: NOV. 29, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of Palestine, has applied for an immigrant visa, which requires him to establish, inter alia, that he is admissible to the United States. Section 245(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(a)(2). The Applicant was found to be inadmissible, under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude (“CIMT”), and he sought a discretionary waiver of inadmissibility under section 212(h)(1)(A), (B) of the Act.

The Director of the Nebraska Service Center determined that one of the Applicant’s four convictions, arson, which constituted a CIMT, was also a “violent or dangerous” crime, and denied his waiver request, concluding that he did not show that he warranted a section 212(h) waiver of inadmissibility under the heightened discretionary standard applicable to his case pursuant to 8 C.F.R. § 212.7(d).

On appeal, the Applicant submits a brief and additional country conditions reports. He reasserts his eligibility for a waiver and reiterates that he warrants a favorable exercise of discretion. 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 remand the matter to the Director for the entry of a new decision.

I. LAW

A noncitizen convicted of (or who admits having committed, or who admits committing acts which constitute the essential elements of) a CIMT (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, for which the noncitizen may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. Section 212(h)(1)(B) of the Act provides for a waiver if denial of admission would result in “extreme hardship” to a U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. In addition to establishing eligibility for a waiver under this section of the Act, by a preponderance of the evidence, the noncitizen also must show that the waiver request warrants a favorable exercise of discretion. Section 212(h)(2) of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010) (holding that the applicant bears the burden to show eligibility for the benefit sought); *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996) (stating that the noncitizen also has the burden to demonstrate that the waiver request warrants a favorable exercise of discretion).

In assessing the discretionary factors, we must balance the adverse factors evidencing the noncitizen'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. *Matter of Mendez-Moralez*, 21 I&N Dec. at 300-301. However, a favorable exercise of discretion is not warranted for those who have been convicted of a "violent or dangerous crime," except in "extraordinary circumstances," which may be demonstrated by, inter alia, a clear showing of "exceptional and extremely unusual hardship" if the waiver request is denied. 8 C.F.R. § 212.7(d). 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) (discussing exceptional and extremely unusual hardship factors in the context of cancellation of removal under the Act). However, the existence of extraordinary circumstances alone may not be enough to warrant a favorable exercise of discretion. *Matter of Jean*, 23 I&N Dec. 373, 383 (A.G. 2002) (providing that depending on the gravity of the 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); *Matter of C-A-S-D-*, 27 I&N Dec. 692, 694, 699 (BIA 2019) (same) (citing *Matter of Jean*).

II. ANALYSIS

In 2019, the Applicant was charged with arson ("burning in cooperation") in violation of Article 371 of the Penal Code of Jordan for 1960, with "exasperating penalties" under Article 16 of the same Code; and in [REDACTED] 2020, he was ultimately convicted of inciting or instigating arson ("incitement to burn") based on amended charge under Article 80/1 of the same Penal Code, resulting in a two-month imprisonment sentence and a fine.¹ As the Director noted, the U.S. Department of State found the Applicant inadmissible for a CIMT during his immigration visa proceedings based on this conviction. The Director further determined that the arson conviction was for a violent or dangerous crime, and that the Applicant therefore was subject to the heightened discretionary standard under 8 C.F.R. § 212.7(d) in order to establish eligibility that he merits a section 212(h)(1)(B) waiver as a matter of discretion. The Director found that, even though the Applicant established that denial of his admission would result in "extreme hardship" to his qualifying relatives, his U.S. citizen wife and children, he did not meet the heightened discretionary standard because he did not establish extraordinary circumstances, including a showing that the denial of the waiver request would result in exceptional and extremely unusual hardship. 8 C.F.R. § 212.7(d). On appeal, the Applicant does not dispute that he was convicted of inciting arson and that it constitutes a CIMT. However, he argues that the conviction was not for a violent or dangerous crime, and alternatively alleges that the Director erred in concluding that his request for a section 212(h) waiver did not warrant a favorable exercise of discretion under the heightened discretionary standard at 8 C.F.R. § 212.7(d).

¹ The Applicant also has three prior convictions. In [REDACTED] 2014, he was convicted of carrying weapons or explosive materials without permission in violation of Article 58 of Israeli Defense Regulations, for which he was imprisoned for less than a month. He was then convicted twice for manufacturing, carrying and possessing weapons under Article 230 of Israeli Security Instructions—first in 2014, resulting in a suspended 18-month imprisonment sentence and a fine; and again in 2018, for which he received a suspended 18-month imprisonment term and served a lesser sentence of 31 days in prison and a fine.

A. The Applicant's Arson Conviction Is a Violent or Dangerous Crime

A copy of the relevant foreign Penal Code the Applicant submitted in the English language indicates that at the time of his conviction a violation of its arson code (Article 371) occurred when a person commits any arson "with the intention to cause material harm to others or to unlawfully benefit the perpetrator or any other person." Article 80/1 of the Penal Code further defined "inciter" as "a person who induces or tries to induce another person to commit a crime, by means of money or gift, promise, threat, order, or an abuse of authority or powers."

In determining whether a crime is a violent or dangerous crime for purposes relevant here, we are not limited to a categorical inquiry but may consider both the statutory elements and the nature of the underlying offense. *See, e.g., Torres-Valdivias v. Lynch*, 786 F.3d 1147, 1152 (9th Cir. 2015); *Waldron v. Holder*, 688 F.3d 354, 359 (8th Cir. 2012). As there is no statutory or regulatory definition of the words "violent" and "dangerous," we interpret these terms according to their common, ordinary meanings. 8 C.F.R. § 212.7(d). 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." *Id.* Here, the Applicant was charged with arson and ultimately convicted of inciting arson for sending his two accomplices to burn the victim's cars and the spare parts, and the accomplices set a fire on the victim's properties by pouring gasoline with the purpose of causing harm to the victim. The convicting court further found that the Applicant's intentional act of sending the two men to burn the victim's properties to cause him damage was evident because the victim previously had problems with the Applicant.

The criminal offense of inciting arson for which the Applicant was convicted involved vehemently threatening conduct with intent to cause damage, which also placed the victim and other individuals at a serious risk of harm. The Applicant's conviction therefore was for a violent or dangerous crime. Although he reiterates that he resorted to his criminal conduct due to allegedly unfair circumstances and that his conviction resulted from biased criminal proceedings, we cannot go behind his conviction to assess his guilt or innocence. *See Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996). The Applicant does not otherwise provide any persuasive argument or cite any pertinent legal authority for the proposition that his conviction was not for a violent or dangerous crime.²

B. Exceptional and Extremely Unusual Hardship under Heightened Discretionary Standard

As stated, the Director found the conviction for inciting arson constituted a CIMT *and* a violent or dangerous crime, and denied the waiver request, concluding that the Applicant did not meet the heightened discretionary standard where he did not demonstrate exceptional and extremely unusual hardship to show extraordinary circumstances as a result of his inadmissibility.³ 8 C.F.R. § 212.7(d). Specifically, the Director determined that the claimed emotional, medical, and financial hardships, including the difficulties related to the Applicant's family's visits to Palestine, did not individually or collectively amount to exceptional and extremely unusual hardship. On appeal, the Applicant asserts

² Contrary to his appeal assertions, the Director determined that his arson conviction was for a violent or dangerous crime, and did not reach whether the other crimes of which he was convicted also constituted violent or dangerous crimes.

³ The Applicant's waiver case does not indicate, and he did not claim, any extraordinary circumstances involving national security or foreign policy considerations.

that the Director correctly determined that his U.S. citizen spouse and children would experience extreme hardship for purposes of inadmissibility waiver under section 212(h)(1)(B) of the Act, but he maintains that the hardships he and his family demonstrated also rise to the heightened standard of exceptional and extremely unusual hardship, if he is refused admission. 8 C.F.R. § 212.7(d).

The Applicant, a 33-year-old native and citizen of Palestine, married his 26-year-old U.S. citizen spouse in 2017 in Palestine when she was a college student in the United States. They have three U.S. citizen children—two daughters, two and five years old, respectively, and a four-year-old son—who were born in the United States in the Applicant's absence. The Applicant has never been to this country, and his spouse and children continue to split their time between here and Palestine since 2017. The record shows that the spouse struggles with severe depression and anxiety, resulting in a new diagnosis of "Persistent Depressive disorder, with melancholic features, late onset, with intermittent major depressive episodes, without current episode, severe," reflecting deteriorating mental health conditions since her first diagnosis largely due to the Applicant's inadmissibility. The spouse states that visiting the Applicant in [redacted] Palestine, where she suffered a miscarriage, is extremely difficult for her and the children emotionally and financially, in part due to the high cost of traveling there, language and cultural barriers, limited healthcare, and lack of work and educational opportunities for foreigners. The spouse also asserts that the restrictions imposed on foreigners in renewing visas and obtaining residential status in Palestine, as well as the ongoing civil unrest and tension in the region, adversely affect the family's wellbeing. The record also indicates that she has limited income; and although she opened a small store in [redacted] 2020, in the hopes of operating it with the Applicant, she states that she is unable to run the business on her own without incurring debt. She further states that her widowed mother, a 67-year-old U.S. citizen who resides here with documented history of depression and chronic arthritis limiting her daily activity, relies on the spouse's company and help. The record also contains updated medical documents for the spouse's mother showing that she fell and sustained multiple fractures on her left ribs in August 2022, and the treating physician noted that her injuries were severe. The spouse continues to fear losing her children's custody in Palestine according to the country's religious Sharia law, if she is unable to bring them back with her to the United States after their visits. Based on the foregoing, the Applicant asserts that he and his family would suffer exceptional and extremely unusual hardship, if the waiver application is denied.

As evidence of hardship, the record contains the spouse's three statements, her two psychological reports and other medical documents, including the documents related to her miscarriage in Palestine, her mother's U.S. medical record indicating preexisting conditions and the recent rib fractures, and the two-year old baby's bronchitis treatment record in Palestine. The record also includes financial documents such as the spouse's bank statements indicating a balance of approximately \$14,000 and monthly spending of \$1,800 in November 2020; record of business registration in [redacted]; business lease contract from 2020 to 2023 indicating a monthly rent of \$2,500; money transfers showing that she received \$800 from family members in 2022; her travel record to Palestine and documents evidencing cost of flights to and from Palestine; and legal fees for the Applicant's immigration matters. The record also includes voluminous country conditions reports on travel restrictions on non-Israelis as well as information on education, child custody law, and ongoing civil tension in or near Palestine. The Applicant further submits on appeal supplemental country reports, including a 2021 Human Rights Watch report and a 2022 Human Rights Council report indicating difficulties related to

traveling to and staying in Palestine and hardships and abuses Palestinians and non-Israelis experience in the occupied territories.

The Applicant on appeal has established the requisite exceptional and extremely unusual hardship if the Applicant is refused admission. For purposes of showing extra ordinary circumstances pursuant to 8 C.F.R. § 212.7(d), hardships we may consider are not limited to the qualifying relatives as specified under section 212(h)(1)(B) of the Act. Here, the evidence of record shows that the spouse has been visiting Palestine with their children for many years to be with the Applicant since they married in 2017. She continues to suffer from severe symptoms of depression and anxiety due to ongoing separation, safety risks to her and her children related to visiting Palestine, and other health and financial concerns for her mother, the Applicant, and their children. The record also supports the claim that their financial hardship would be substantial, as the spouse could not independently manage the store she opened here and she has to regularly travel to and from Palestine with the children to visit the Applicant. The record indicates the spouse's 67-year-old widowed mother, who resides in the United States, has the stated preexisting medical conditions and recently suffered rib fractures, further corroborating the claim that she needs the spouse's help. The record also supports the hardship claim related to the family's visits to see the Applicant in [redacted] Palestine, where there are restrictions on foreigners, including limited access to healthcare, education, and work, in addition to language barriers and the high cost of travels. The spouse reiterates that there is also a serious safety risk in Palestine, where she suffered a miscarriage, the Applicant has been stabbed, and the military once searched their family members at gunpoint. Although the Director found that the spouse and the children have been able to visit the Applicant many times for extended periods, and they may even be able to obtain permanent status in Palestine or relocate together to a third country, the spouse avers that the ongoing civil unrest in the region add to the family's extreme stress, such that her only long-term option is to remain in the United States with the children. Publicly available new information subsequent to the filing of the appeal corroborates the spouse's concerns as to her and her family's safety as it indicates that the conditions in Palestine have deteriorated significantly since October 2023 due to the recent Israel-Hamas conflict severely affecting the safety and livelihood of civilians in the region where the Applicant is from, including health infrastructures and basic necessities such as water, food, shelter, and electricity; and current U.S. Department of State's Travel Advisory on Israel, the West Bank and Gaza, consistently support his claim of unusual hardship and safety risk associated with U.S. citizens traveling to Palestine.⁴

⁴ See U.S. Department of State, Israel, the West Bank, and Gaza Travel Advisory, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/israel-west-bank-and-gaza-travel-advisory.html> (last visited Nov. 29, 2023) (warning U.S. citizens to not travel to Gaza due to terrorism and armed conflict and to reconsider traveling to Israel and the West Bank due to terrorism and civil unrest); see also Lauren Leatherby, N.Y. Times, Nov. 25, 2023, *Gaza Civilians, Under Israeli Barrage, Are Being Killed at Historic Pace*, <https://www.nytimes.com/2023/11/25/world/middleeast/israel-gaza-death-toll.html> (last accessed Nov. 29, 2023); Isabel Debre, Associate Press, *Hospitals have special protection under the rules of war. Why are they in the crosshairs in Gaza?*, Nov. 11, 2023, <https://apnews.com/article/israel-hamas-war-gaza-hospitals-be55b16dd18e55be1b8ad395163ca19b> (last accessed Nov. 29, 2023); Isabel Debre, Associate Press, *Fights in bread lines, despair in shelters: War threatens to unravel Gaza's close-knit society*, Nov. 10, 2023, <https://apnews.com/article/israel-hamas-war-palestinians-gaza-water-food-f225bf0723bb5b3ae1961ba6cdef1917> (last accessed Nov. 29, 2023); Amnesty International, *Israel/OPT: 'Nowhere safe in Gaza': Unlawful Israeli strikes illustrate callous disregard for Palestinian lives*, Nov. 20, 2023, <https://www.amnesty.org/en/latest/news/2023/11/israel-opt-nowhere-safe-in-gaza-unlawful-israeli-strikes-illustrate-callous-disregard-for-palestinian-lives/> (last accessed Nov. 29, 2023).

As stated, USCIS generally will not exercise favorable discretion to grant a waiver under section 212(h) of the Act where the applicant has been convicted of a violent or dangerous crime, except in extraordinary circumstances, such as where they have established exceptional and extremely unusual hardship. 8 C.F.R. § 212.7(d). Depending on the gravity of the underlying offense, a showing of extraordinary circumstances may still be insufficient to warrant a favorable exercise of discretion. *Id.* Considering the totality of the evidence in this case, including new evidence and information on appeal, we conclude that the Applicant has demonstrated exceptional and extremely unusual hardship as a result of his inadmissibility. 8 C.F.R. § 212.7(d); *Matter of Monreal-Aguinaga*, 23 I&N Dec. at 62 (discussing exceptional and extremely unusual hardship factors in the cancellation of removal context); *see also Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002) (same; and finding exceptional and extremely unusual hardship involving a single mother with limited resources and her four U.S. citizen children).

Accordingly, we will remand the matter to the Director to determine in the first instance whether the Applicant's request for a section 212(h) waiver warrants a favorable exercise of discretion in light of the determination that he has established extraordinary circumstances.⁵ 8 C.F.R. § 212.7(d); *see also Matter of Mendez-Morales*, 21 I&N Dec. at 300-301 (holding that in assessing the discretionary factors, we *must* balance all the discretionary considerations presented in *the record as a whole*); *Matter of C-A-S-D-*, 27 I&N Dec. at 694, 699 (stating that a showing of exceptional and extremely unusual hardship might still be insufficient to grant the immigration benefit as a matter of discretion). On remand, the Director thus should weigh all the adverse factors with the Applicant's equities, including the demonstrated exceptional and extremely unusual hardship as positive discretionary considerations.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

⁵ The Director noted various inconsistencies as to the Applicant's prior marriages and his other potential children he allegedly claimed in connection with his previous visa petition, and further concluded that the record also lacks evidence of good moral character. However, the Director did not otherwise provide a discretionary determination by balancing the relevant discretionary factors as presented in the record as a whole, as required.