U.S. Citizenship and Immigration Services

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

In Re: 27817147

Date: OCT. 03, 2023

Appeal of Nebraska Service Center Decision

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

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), and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), because he departed from the United States and again sought admission after the accrual of unlawful presence greater than one year, which barred him from seeking admission for 10 years from his departure date. He seeks waivers of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, respectively, to obtain status as a lawful permanent resident in the United States.

The Director of the National Benefits Center denied the application, concluding that the record did not establish that the Applicant had been rehabilitated, as required by section 212(h)(1)(A) of the Act, or that he had established that his United States citizen spouse would suffer extreme hardship due to his relocation to Guatemala, as required by section 212(a)(9)(B)(v) of the Act. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

## I. LAW

Section 212(a)(2)(A)(i)(I) of the Act provides that any 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)(9)(B)(i)(II) of the Act provides that any foreign national who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of their departure or removal from the United States, is inadmissible.

A foreign national who has been convicted of a crime involving moral turpitude may establish eligibility for a waiver of that conduct if, 1) the activities occurred more than 15 years prior to the date of their application for admission, 2) they can establish that their admission would not be contrary to the national welfare, safety, or security of the United States, and 3) they establish that they have been rehabilitated. Section 212(h)(1)(A) of the Act. A foreign national may also be eligible for a waiver if they establish that they have a qualifying relative who may experience extreme hardship as a result of the foreign national's denial of admission. Section 212(h)(1)(B) of the Act.

A foreign national who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of their departure may establish eligibility for a waiver of their inadmissibility if they establish that a qualifying relative (United States citizen or lawful permanent resident spouse or parent) may experience extreme hardship as a result of the foreign national's denial of admission, and that their waiver should be granted as a matter of discretion. Section 212(a)(9)(B)(v) of the Act.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *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). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

In addition to demonstrating the requisite extreme hardship, the applicant must also show that United States Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

## II. ANALYSIS

The Applicant, a native and citizen of Guatemala, filed the instant Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), in November 2020, as he was informed that he was inadmissible under sections 212(a)(2)(A)(i)(I) and 212(a)(9)(B)(i)(II) of the Act, for a conviction of a CIMT and for departing and again seeking admission after the accrual of unlawful presence of more than one year. With his waiver application, he acknowledged his inadmissibility grounds, and noted that he crossed the border into the United States in 2001, and lived without documentation until October 2017, when he left to attend a visa appointment in Guatemala. The Applicant also stated that in 2007, he was convicted for aggravated assault on a police officer and sentenced to two years of probation.

After review of the evidence provided with the waiver application, and in response to a request for evidence (RFE), the Director denied the waiver application. The Director's decision concluded that, although 15 years had passed since the Applicant's conviction, "mere assertions that [he has] been rehabilitated without evidence doesn't support [his] claim that [he has] indeed been rehabilitated," and

as such, he was ineligible for the waiver under section 212(h)(1)(A) of the Act. The Director further stated that the evidence submitted was insufficient to establish that his qualifying relative was experiencing "any one hardship that is extreme" or that there were sufficient hardships to rise to the level of extreme in the aggregate. The Director listed the evidence provided and stated that it was carefully considered. The Director noted that the Applicant had submitted evidence of his spouse's medical conditions, which include atypical chest pain, numbness of the hands, anxiety, and depression, as well as difficulties being faced by their children, including anxiety, vitiligo, and food allergies. The Director then stated that "none of the evidence establishes how these factors has caused your family hardship that rises to the level of extreme." Further, the Director indicated that the Applicant did not establish that he warranted a favorable exercise of discretion. The decision indicated that the Applicant's only favorable factors were his family ties and that he had not been arrested again after his 2007 conviction, and that his unfavorable factors were his inadmissibility grounds, failure to establish extreme hardship to a qualifying relative, and that he had not proven his rehabilitation.

On appeal, the Applicant contends that the Director's statement that the Applicant had not established that he was eligible for a waiver under section 212(h)(1)(A) of the Act was inaccurate and did not adequately consider the evidence submitted. In our de novo review of the record, we agree. With his waiver application, the Applicant expressed remorse, stating that he was sorry for what he did. The Applicant further submitted a letter from the Superior Court of New Jersey, [redacted] Probation Division, which indicated that the Applicant satisfactorily completed his term of probation, and that all "court mandates, finds, and conditions" had been fulfilled. He also established that he had not been arrested or been involved with law enforcement since his 2007 conviction. In support of his character, the Applicant submitted copies of his Internal Revenue Service tax transcripts, indicating that he paid his taxes. The Applicant and his wife, while he was present in the United States, owned a restaurant that has since closed. Finally, he submitted letters from his stepson, his niece, and the Head of School of his children's school, indicating that he loves and cares for his children. As a result, we determine that the Applicant has been rehabilitated and that his admission would not be contrary to the national welfare, safety, or security of the United States. The Applicant has thus established that he is eligible for a waiver of inadmissibility pursuant to section 212(h)(1)(A) of the Act.

The Applicant further asserts that the Director's assessment only acknowledged his qualifying relative's medical conditions specifically but did not acknowledge in any detail the Applicant's arguments that the qualifying relative faces financial hardship as a result of their separation, or country conditions in Guatemala. We also agree here. While the Director indicated that the evidence was "carefully considered," the decision did not detail the hardships outlined by the Applicant and his spouse. Namely, their decrease in income after the Applicant's separation, the fact that the Applicant has been unable to find work in Guatemala and is unable to provide any support to his wife and their four children, the loss of their restaurant, and their reliance on public assistance. Remanding a matter is appropriate when the Director does not fully explain the reasons for the denial so that the affected party has a fair opportunity to contest the decision and the AAO has an opportunity to conduct a meaningful appellate review. 8 C.F.R. § 103.3(a)(1)(i),(iii) (providing that the Director's decision must explain the specific reasons for denial and notify the affected party of appeal rights); *cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). We note that the Director did not sufficiently explain the requirements for the waiver for the Applicant's

inadmissibility under section 212(a)(9)(B)(v) of the Act, and only provided the statutory language for waivers located at section 212(h)(1)(A) and (B) of the Act.[1]

Further, in review of the Director's decision, the decision indicates that the crime which the Applicant was convicted of is considered a violent or dangerous crime. While the decision notes this determination, the Director did not provide an explanation or analysis of the crime and how they reached that conclusion, nor did they explain that a determination that a crime is violent or dangerous relates only to the standard applied when conducting a discretionary analysis. *See* 8 C.F.R. § 212.7(d), which explains that the Secretary of Homeland Security generally will not favorably exercise discretion for foreign nationals convicted of violent or dangerous crimes, "except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act."[2]

As we have determined that the Applicant has presented sufficient evidence to establish his rehabilitation, we withdraw the Director's determination that he did not warrant a favorable exercise of discretion, as the Director had considered a lack of rehabilitation a negative factor. We further determine that the Director's decision did not include an adequate discretionary analysis of the positive and negative factors present in the Applicant's case, such as the Applicant's presentation of country conditions, and a full accounting of his family ties in the United States. As such, we remand the matter to the Director to determine if the Applicant has established extreme hardship to his qualifying relatives, whether the crime he was convicted of was a violent or dangerous crime, and ultimately, whether he merits a favorable exercise of discretion.

## III. CONCLUSION

The Applicant has established that he is eligible for a waiver under section 212(h)(1)(A) of the Act. The matter is remanded to the Director for the entry of a new decision to consider all of the factors of potential extreme hardship to his qualifying relatives in order to obtain a waiver under section 212(a)(9)(B)(v) of the Act, whether he has established that he warrants a favorable exercise of discretion, and whether his criminal conviction was a violent or dangerous crime, and as such, whether the heightened discretionary standard should be applied to his waiver application.

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

[1] The Director's decision also only indicated that the Applicant has one qualifying relative – his spouse. However, the record reflects that his mother also resides in the United States as a lawful permanent resident, and therefore would be considered a qualifying relative for the purposes of a waiver under section 212(a)(9)(B)(v) of the Act.

[2] The Applicant, on appeal, contends that his criminal conviction was not a violent or dangerous crime; however, as we have determined that the Director did not explain how they reached their conclusion, we do not address those arguments here.