U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27943173

Date: OCT. 3, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant, a native of Albania and citizen of Montenegro currently residing in Montenegro, 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 (CIMT) 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 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, concluding that the record did not establish that denial of admission would result in exceptional and extremely unusual hardship. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant argues that he has established exceptional and extremely unusual hardship to his family members if he is not allowed to join them in the United States.

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

Section 212(a)(2)(A)(i) of the Act provides that a 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.

Noncitizens who are 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. Where the activities resulting in inadmissibility occurred more than 15 years ago, a discretionary waiver is available if admission to

the United States 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 Applicant was convicted of Robbery of the Socialist Property in Albania for events that occurred in [redacted] 1989. According to the criminal documents provided, the Applicant and an accomplice were witnessed attempting to steal watermelons from a collective farm when they were approached by the three guards. The Applicant threatened to kill the guards if they came any closer and "with the lever hits the two witness guards on the head." The Applicant was sentenced to 7 years in prison for his part in the robbery and physical harm to the guards. The Director determined, based on the above information, that the Applicant's conduct constituted a violent or dangerous crime and therefore requires the higher discretionary standard of 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 Director determined that the Applicant had established that his offense had been committed more than 15 years ago and that he had shown rehabilitation for eligibility under section 212(h)(1)(A) of the Act but that he had not established exceptional and extremely unusual hardship to himself, his lawful permanent resident spouse, lawful permanent resident children, or in the aggregate.

On appeal, the Applicant asserts that he has established exceptional and extremely unusual hardship based on the emotional stress experienced by his spouse and children in his absence. The Applicant has not provided any additional evidence on appeal but argues that the evidence provided to the Director is sufficient to establish the required hardship. As evidence of emotional hardship, the Applicant provided a personal statement, a psychological report for his spouse from 2020, a second psychological assessment for his spouse from 2022, an affidavit from his spouse, and affidavits from the Applicant's children. In his statement to the Director, the Applicant provided that his spouse is being deprived of his love, companionship, and physical affection, as well as mental, emotional, and financial support because he is unable to come to the United States. He further stated that his children tell him that his spouse is often sad and withdrawn. He stated that he feels badly for not being able to support his children as they adjust to their new surroundings in the United States. The 2020 psychological report indicates that the Applicant's spouse was undergoing therapy to cope with the Applicant's immigration issues and the emotional consequences of relocating to a new country. The second psychological assessment diagnosed the Applicant's spouse with major depressive disorder and generalized anxiety disorder. In her letter to the Director, the Applicant's spouse stated that she misses her husband and her children miss their father. She further stated that she has been seeking psychological help for depression, stress, anxiety, and sadness. She stated that she has experienced trouble with sleeping, memory, and energy since coming to the United States and working so hard to provide for her family. Lastly, she stated that the suffering her children have endured by not being able to share the new milestones in their lives with their father makes her suffering worse. The Applicant's daughter also provided a letter of support in which she stated that every new experience in the United States is tempered by her inability to share the moment with her father in person. She further stated that her mother has changed a great deal since coming to the United States and that her brothers have begun acting out in school as a result of not having their father around. The Applicant further provided letters of support from family and friends in the United States providing similar narratives regarding the emotional toll the Applicant's absence has caused for his family. We acknowledge the claims of the Applicant and his family members, however, the evidence of emotional hardship does not appear to meet the exceptional and extremely unusual standard required by 8 C.F.R. § 212.7(d). *See Matter of Andazola-Rivas*, 23 I&N Dec. at 319.

As evidence of financial hardship, the applicant provided tax returns for his spouse, some bills, and his spouse's statement regarding the difficulties of providing for three children on her own. However, the record lacks probative evidence regarding the complete financial picture of the family including

the cost of housing, if any, or other sources of income such as gifts from family and friends or financial support from abroad. The Applicant does not describe his financial situation abroad, such as whether he has any savings he may have accrued over time, or assets, such as property, that could be sold to generate income upon coming to the United States. While the Applicant claims that his arrival in the United States would assist his spouse in meeting her financial obligations, he has not described his skills or employment prospects so as to establish he would bring economic relief to his family. Absent further development, the record does not establish that the Applicant or his family would experience exceptional or extremely unusual economic hardship if he is denied admission to the United States.

Upon review of the entire record, we acknowledge that the Applicant has sufficiently shown that his family will continue experiencing emotional difficulties due to family separation. As discussed above, however, the Applicant has not sufficiently documented the financial hardship his spouse will continue to experience, or demonstrated the extent to which the family's daily lives will be affected. Although the totality of the evidence may be sufficient to establish extreme hardship due to family separation, we conclude that the aggregate psychological and financial 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. As such, the Applicant has not demonstrated that he merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d).

ORDER: The appeal is dismissed.