U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18959405

Date: FEB. 9, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Grounds of Inadmissibility

The Applicant applied abroad for an immigrant visa and was found inadmissible to the United States for being convicted of a "crime involving moral turpitude" (CIMT). He seeks to waive the inadmissibility ground under Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h).

The Director of the Nebraska Service Center confirmed the Applicant's inadmissibility and denied his waiver application. The Director concluded that the Applicant's crime not only involved moral turpitude but was also "violent or dangerous." *See* 8 C.F.R. § 212.7(d). The Director also found insufficient evidence of the Applicant's eligibility for the requested waiver, determining that he demonstrated neither his rehabilitation nor that denial of his admission would cause "extreme hardship" to his lawful permanent resident mother. *See* section 212(h)(1) of the Act.

On appeal, the Applicant disputes the alleged violent or dangerous nature of his crime. He also asserts that U.S. Citizenship and Immigration Services (USCIS): disregarded evidence of his rehabilitation; overlooked potential, extreme hardship to his mother; and deprived him of due process rights under the Fifth Amendment.

The Applicant bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (discussing the standard of proof). Upon *de novo* review, we will reject the Applicant's due process claim and affirm the Director's finding regarding the violent or dangerous nature of the Applicant's crime. Further, because the Director improperly conditioned a rehabilitation finding on the Applicant's admission of criminal guilt and overlooked evidence of potential hardship to his mother, we will withdraw the Director's other findings and remand the matter for entry of a new decision consistent with the following analysis.

I. INADMISSIBILITY

Noncitizens generally cannot gain admission to the United States if they were convicted of, or admit committing the essential elements of, CIMTs. Section 212(a)(2)(A)(i)(I) of the Act. Crimes involve moral turpitude if their elements require reprehensible conduct and culpable mental states. *Matter of Salad*, 27 I&N Dec. 733, 735 (BIA 2020) (citations omitted). Conduct is "reprehensible" if it is

"inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Id.*

Applicants may generally waive CIMT convictions in one of two ways. They may demonstrate their "rehabilitation" under section 212(h)(1)(A) of the Act. Or, under section 212(h)(1)(B) of the Act, they may establish that denials of their admissions would cause extreme hardships to their U.S. citizen or lawful permanent resident spouses, parents, sons, or daughters. In either case, applicants must also demonstrate that they merit favorable exercises of discretion. Section 212(h)(2) of the Act.[1]

The Applicant is a 40-year-old native and citizen of Vietnam. In [redacted] 2001, when he was 20 years old, he went to a party at a discotheque in [redacted] where a fight erupted. The Applicant maintains that he did not participate in the melee. But he was arrested in connection with the incident and pleaded guilty to "intentionally causing injury." *See* Article 104 of the Vietnamese Penal Code. A judge sentenced him to six months in prison.

The Applicant does not contest the inadmissibility finding on appeal, and the record supports the Director's determination.

> In the context of assault crimes, a finding of moral turpitude involves an assessment of both the state of mind and the level of harm required to complete the offense. Thus, intentional conduct resulting in a meaningful level of harm, which must be more than mere offensive touching, may be considered morally turpitudinous.

Matter of J-G-P-, 27 I&N Dec. 642, 645 (BIA 2019) (citation omitted).

The Applicant's offense involved intentionally inflicting injury or causing harm to the health of others. Article 104 of the Vietnamese Penal Code. The Board of Immigration Appeals (BIA) has found that a crime requiring the intentional causing of physical injury to another involves moral turpitude. *See Matter of Solon*, 24 I&N Dec. 239, 243-45 (BIA 2007).

The Applicant has only been convicted of one crime. But the record shows that he faced a maximum penalty of more than one year of imprisonment for the offense. Thus, the "petty offense exception" does not apply to him. *See* section 212(a)(2)(A)(ii)(II) of the Act. The record therefore establishes the Applicant's inadmissibility for his conviction of a CIMT under section 212(a)(2)(A)(i)(I) of the Act.

II. VIOLENT OR DANGEROUS CRIME

USCIS will not generally exercise favorable discretion to waive a criminal ground of inadmissibility under section 212(h)(2) of the Act if the ground involves a "violent or dangerous" crime. 8 C.F.R. § 212.7(d). Exceptions include "extraordinary circumstances, such as those involving national security or foreign policy considerations," or cases in which applicants demonstrate that denials of their admissions would cause "exceptional and extremely unusual hardship" to themselves or others.

[1] Self-petitioners under the Violence Against Women Act (VAWA) may also apply to waive criminal grounds of inadmissibility. They need only demonstrate that they merit favorable exercises of discretion. Section 212(h)(C) of the Act.

Id. The standard of exceptional and extremely unusual hardship requires hardship "substantially beyond the ordinary hardship" expected upon denial of a noncitizen's admission to the United States and is limited to "truly exceptional" situations. *Matter of Monreal-Aguinga*, 23 I&N Dec. 56, 62 (BIA 2001) (defining the term "exceptional and extremely unusual hardship" in the context of an application for cancellation of removal under section 240A(b) of the Act, 8 U.S.C. § 1229(b)).

The regulation at 8 C.F.R. § 212.7(d) does not define the phrase "violent or dangerous crime" or the individual terms "violent" or "dangerous." We therefore apply the terms' ordinary meanings. *See Matter of Al Wazzan*, 25 I&N Dec. 359, 365 (AAO 2010) (citation omitted). The term "violent" means "of, relating to, or characterized by strong physical force." Black's Law Dictionary (11th ed. 2019). The term "dangerous" means "perilous, hazardous, [or] unsafe," or "likely to cause serious bodily harm." *Id.* In determining whether a crime is violent or dangerous, we may consider both statutory elements of the offense and the specific circumstances of an applicant's conduct. *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 the Director found, the statute of conviction indicates that the Applicant's offense was a dangerous crime. The statute required the intentional infliction of injury or causing of harm to the health of others. The statute therefore indicates that the Applicant's crime was "unsafe" and "likely to cause serious bodily harm." *See* Black's Law Dictionary, *supra* (defining the term "dangerous").

The Applicant asserts that the Director erred by focusing on the statute of conviction and disregarding the specific circumstances of his case. The Applicant reasserts his non-involvement in the fight that led to his conviction. Moreover, he contends that the Vietnamese court records he submitted do not indicate that he "hit anyone or was an active participant in the fight."

In determining the effect of a criminal conviction, however, USCIS cannot go beyond the judicial record to determine an applicant's guilt or innocence. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 304 (BIA 1996) (citations omitted). Because a criminal court accepted the Applicant's guilty plea, we must consider him to be guilty of the crime. *Id.*

Also, on page 16 of the court records submitted by the Applicant, an appeals court found that he and six others stood in front of the discotheque to fight another group and "caused injuries" to two people. Thus, contrary to the Applicant's argument, the record indicates his participation in the fight and his infliction of injuries on others. We will therefore affirm the Director's finding that the Applicant was convicted of a violent or dangerous crime.

III. REHABILITATION

To waive convictions of CIMTs, waiver applicants may demonstrate that: 1) their criminal activities occurred more than 15 years before the dates of their applications for U.S. admissions; 2) their admissions would not harm the country's welfare, safety, or security; and 3) they have been "rehabilitated." Section 212(h)(1)(A) of the Act.

The Applicant's criminal activities occurred in 2001, and he applied for an immigrant visa in 2018. Thus, he meets the Act's 15-year requirement. Also, as the Director found, the Applicant

demonstrated that he has no other criminal convictions and that, from 2006 through 2018, he made several donations to temples and other charitable organizations in Vietnam.

The Director, however, found that, because the Applicant does not admit commission of his crime, he cannot establish rehabilitation. The Director stated: "USCIS cannot find that an applicant has been rehabilitated if the applicant cannot take the steps of admitting his crime, acknowledging that his acts were wrong, and accepting responsibility for the outcome of the criminal activity."

"Taking responsibility and showing remorse for one's criminal behavior does constitute some evidence of rehabilitation." *Matter of Mendez-Moralez*, 21 I&N Dec. at 304 (addressing rehabilitation in the context of a discretionary determination under section 212(h)(2) of the Act). But "[t]his is not to say that an alien who claims innocence and does not express remorse could never present persuasive evidence of rehabilitation by other means." *Id.* Thus, contrary to the Director's finding, rehabilitation determinations do not require applicants to admit their crimes.

By finding the Applicant's rehabilitation foreclosed by his claim of criminal innocence, the Director strayed from precedent case law. *See* 8 C.F.R. § 103.10(b) (requiring USCIS officers to follow precedent BIA or Attorney General decisions in all proceedings involving the same issue or issues). We will therefore withdraw the Director's finding and remand the matter for reconsideration of the Applicant's rehabilitation under section 212(h)(1)(A) of the Act.

IV. EXTREME HARDSHIP

Applicants may alternatively waive convictions of CIMTs by demonstrating that denials of the applicants' admissions would cause extreme hardships to their U.S. citizen or lawful permanent resident spouses, parents, sons, or daughters. Section 212(h)(1)(B) of the Act.

The existence of extreme hardships to qualifying relatives depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzales*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Relevant factors include: the presence in the United States of lawful permanent resident or U.S. citizen family members of qualifying relatives; family ties of qualifying relatives abroad; conditions in the countries to which they would relocate; the extent of their ties to those countries; financial impacts of their departures from the United States; and any significant health conditions they may have, particularly those that cannot be suitably treated abroad. *Id.* at 565-66. "Relevant factors, though not extreme in themselves, must be considered in the aggregate." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Denials of U.S. admission often cause hardships to qualifying relatives of noncitizens. To reach the requisite level of extreme hardship, however, the difficulties must exceed the usual or expected hardships. *Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996). Economic harm, loss of current employment, emotional hardship caused by severing family and community ties, and cultural readjustment commonly affect relatives of excluded noncitizens and generally do not demonstrate extreme hardship. *Id.*

If waiver applicants are denied admission and forced to remain abroad, their qualifying relatives generally have two options: separation; or relocation. Under the separation option, the relatives

would remain in the United States, separated from the excluded applicants. In contrast, the relocation option would involve the relatives moving abroad to live with or near the applicants.

USCIS policy states that, unless waiver applicants establish that their qualifying relatives would separate or relocate, the applicants must demonstrate extreme hardship under both options. 9 *USCIS Policy Manual*, B.(4)(B), https://www.uscis.gov/policy-manual. Applicants can establish separation or relocation by submitting sworn statements from their qualifying relatives specifying which option they would choose. *Id.*

The Applicant has not demonstrated whether his qualifying relative - his 78-year-old, lawful permanent resident mother - would remain separated from him in the United States or would return to Vietnam to live with him. The Applicant therefore must demonstrate extreme hardship under both scenarios.

The Director found that the Applicant did not demonstrate that denial of his admission would cause extreme hardship to his mother if she remained in the United States. As the Applicant argues, however, the Director considered only potential hardship to the Applicant's mother based on her medical condition. The Director did not discuss evidence of record regarding potential emotional and financial hardships to her. The Director also did not discuss potential hardships to her in the aggregate. *See Matter of Ige*, 20 I&N Dec. at 882.

Because of these deficiencies, we will withdraw the Director's hardship decision. On remand, if the Director does not find the Applicant to be rehabilitated, she should reconsider the potential hardships to his mother. The Director's reconsideration should include discussion of all claimed types of hardship to the qualifying relative and an evaluation of the hardships in the aggregate.

If the Director finds that the Applicant establishes his rehabilitation or potential, extreme hardship to his mother, the Director should then consider whether the Applicant merits a favorable exercise of discretion under the heightened standard of proof.

V. DUE PROCESS

The Due Process Clause of the Fifth Amendment states that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." Denial of discretionary immigration relief, however, does not violate a substantive interest protected by the Due Process Clause. *See, e.g., Mendez-Garcia v. Lynch*, 840 F.3d 655, 665 (9th Cir. 2016).

The Applicant's requested waiver is a discretionary form of immigration relief. *See* section 212(h)(2) of the Act (committing the waiver of a criminal ground of inadmissibility to the Attorney General's "discretion"). Denial of the Applicant's waiver therefore did not deprive him of "life, liberty, or property" under the Due Process Clause. His constitutional claim is therefore unavailing.

VI. CONCLUSION

The Applicant's conviction constitutes a violent or dangerous crime, requiring a heightened, discretionary standard of proof. The Director, however, improperly conditioned a rehabilitation

finding on the Applicant's admission of criminal guilt and overlooked evidence of hardships to his lawful permanent resident mother.

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