U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33400565

Date: JUNE 5, 2024

Appeal of Nebraska Service Center Decision

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

The Applicant, a national of the United Kingdom, has applied for an immigrant visa abroad. The U.S. Department of State (DOS) determined that the Applicant was inadmissible to the United States for having been convicted of a crime involving moral turpitude (CIMT). He seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), to obtain status as a lawful permanent resident in the United States.

The Director of the Nebraska Service Center denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant does not merit a favorable exercise of discretion under the heightened hardship standard for being convicted of a violent or dangerous crime. 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 dismiss the appeal.

## I. LAW

Any 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. Section 212(a)(2)(A)(i) of the Act. Noncitizens who are inadmissible on this ground may seek a discretionary waiver of inadmissibility under section 212(h) of the Act.

A foreign national who has been convicted of a crime involving moral turpitude may establish eligibility for a waiver of inadmissibility 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.

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.

The regulation at 8 C.F.R. § 212.7(d) generally precludes a favorable exercise of discretion in cases where a noncitizen is inadmissible under section 212(a)(2) of the Act on account of a violent or dangerous crime, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which denial of the application would result in exceptional and extremely unusual hardship.

In Matter of Monreal, 23 I&N Dec. 56 (BIA 2001), the Board of Immigration Appeals (BIA) first considered the "exceptional and extremely unusual" hardship standard in a precedent decision in the case of a 34-year-old Mexican national who was the father of three United States citizen children. The BIA held that to establish exceptional and extremely unusual hardship under section 240A(b) of the Act, a noncitizen must demonstrate that his or her spouse, parent, or child would suffer hardship that is substantially beyond that which would ordinarily be expected to result from the person's departure. The BIA specifically stated, however, that the alien need not show that such hardship would be "unconscionable." Id. at 60. The BIA also noted that, in deciding a cancellation of removal claim, consideration should be given to the age, health, and circumstances of family members in question, including how a lower standard of living or adverse country conditions in the country of return might affect those relatives. Id. at 63.

An application for admission to the United States or for adjustment of status is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. Matter of Alarcon, 20 I&N Dec. 557, 562 (BIA 1992).

## II. ANALYSIS

On appeal, the Applicant filed a Form I-290B Notice or Appeal or Motion which asserts two errors: (1) the Director mischaracterized the Applicant's conviction as a sexual assault and (2) that the Director erred in making an unfavorable discretionary determination.[1]

We agree that the Director mischaracterized the Applicant's conviction as a sexual assault, however the error was harmless, as it did not impact the finding of inadmissibility, or the proper legal standards under which the Applicant's request for a waiver should be adjudicated. The Applicant correctly points out that his [redacted] 2008 conviction is for the felony of "willful infliction of corporal injury on a spouse" in violation of section 273.5 of the California Penal Code. The elements of this crime include willfulness, and the infliction of corporal injury resulting in a traumatic condition upon certain victims, including a spouse. In the instant case, the victim was the Applicant's spouse. We find that

[1] The Applicant stated on the Form I-290B, Notice of Appeal or Motion, that his brief and/or additional evidence would be submitted to the AAO within 30 calendar days of filing the appeal. To date, we have not received his brief or additional evidence.

this is a violent or dangerous crime pursuant to 8 C.F.R. § 212.7(d), which the Applicant does not dispute on appeal. Therefore, the Director's error in mischaracterizing the crime is harmless and has not prejudiced the Applicant.

Apart from the mischaracterization of the crime discussed supra, which was harmless error, we adopt and affirm the remainder of the Director's decision. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); see also Maashio v. INS, 45 F.3d 1235, 1238 (8th Cir. 1995) (appellate adjudicators may adopt and affirm the decision below). On appeal, the Applicant submits that the Director's exercise of discretion must take into account not just statutory elements of the offense but also factual circumstances underlying the case which the Applicant claims was an isolated incident involving a husband and wife arguing, the wife stepping back, losing balance and hitting her head on a cabinet handle. The Applicant further asserts there was neither an intent to cause injury nor any serious injury sustained. However, the Applicant cites no regulation, statute, legal precedent, or evidence in the record to support his assertions on appeal. Furthermore, the Applicant's conviction for willful corporal injury of a spouse belies his claim that there was no intent to cause injury, because willful intent is an element of the statute of conviction.

## III. CONCLUSION

The Applicant requires a waiver because he is inadmissible for a CIMT. However, he has also been convicted of a violent and dangerous crime and has not clearly demonstrated extraordinary circumstances that warrant a favorable exercise of discretion. Therefore, the Applicant has not shown that circumstances warrant approval of a waiver under section 212(h) of the Act.

ORDER: The appeal is dismissed.