



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

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

MATTER OF O-A-

DATE: MAR. 29, 2017

APPEAL OF NEWARK, NEW JERSEY FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Romania, seeks a waiver of the ground of inadmissibility for a crime involving moral turpitude. *See* Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Newark, New Jersey, Field Office denied the application. The Director concluded that the Applicant did not establish that a qualifying relative would suffer extreme hardship as a result of his waiver being denied.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in not finding that his spouse and other family members would suffer extreme hardship as a result of his waiver being denied. The Applicant also asserts that the favorable factors in his case outweigh the unfavorable factors such that he warrants a favorable exercise of discretion.

Upon *de novo* review, we will sustain the appeal. The Applicant has shown that his spouse will suffer extreme hardship as a result of his waiver being denied and that he warrants a favorable exercise of discretion.

I. LAW

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), 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.

Individuals found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Section 212(h)(1)(A) of the Act provides for a waiver where the activities occurred more

than 15 years before the date of the application if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the foreign national has been rehabilitated. Section 212(h)(1)(B) of the Act provides for a waiver if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter.

II. ANALYSIS

The issues on appeal include whether the Applicant has shown extreme hardship to his qualifying relative and, if so, whether he warrants the favorable exercise of discretion. The Director found that the Applicant did not establish that a qualifying relative would suffer extreme hardship as a result of his waiver being denied. On appeal, the Applicant submits additional evidence to show that his spouse and son will suffer extreme hardship and that he warrants a favorable exercise of discretion. The Applicant does not contest his inadmissibility, a finding supported by the record.¹ We find that the Applicant has established that his spouse will suffer extreme hardship as a result of his waiver being denied and that he warrants the favorable exercise of discretion.

A. Waiver

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relatives are the Applicant's U.S. citizen son and lawful permanent resident spouse.

The evidence includes a statement from the Applicant, a statement from the Applicant's spouse, a statement from the Applicant's son, medical documentation, a psychological evaluation, financial documentation, country condition information for Romania, and family photographs.

The record indicates that if the Applicant's waiver application is denied, he and his spouse would both relocate to Romania because separation would be too difficult. The record establishes that relocation will cause the Applicant's spouse extreme hardship in the form of emotional, financial, and medical hardship. The Applicant and his spouse have been living in the United States for 15 years, the Applicant's two sons and brother live in the United States, and they have strong community ties to their church in the United States. The record includes a letter, dated May 6, 2016, from the Applicant's spouse's primary care physician stating that the Applicant's spouse is unable to perform any kind of work due to her severe medical conditions, which include a degenerative spine, hypothyroidism, and severe depression. Because of the Applicant's spouse's inability to work, the Applicant and his spouse rely on the Applicant's employment in the United States for their income and medical insurance. In addition, country condition information indicates that generally medical

¹ The Applicant was convicted of assault with an automobile causing serious bodily injury, a fourth degree felony in New Jersey under section 2C:12-1C(1) of the New Jersey Statutes. A fourth degree felony in New Jersey has a maximum sentence of 18 months in prison and the Applicant was sentenced to 18 months' probation and 50 hours of community service.

standards in Romania are not up to Western standards and that basic medical supplies are limited. An article submitted by the Applicant states that Romania is experiencing a medical crisis because many doctors are leaving the country. The U.S. Department of State Country Report for Romania also states that hospitals often lack nursing care and assistance for the elderly. The record indicates further that the Applicant and his spouse, both in their 60s, would have difficulty finding employment in Romania. The documentation on the record states that Romania currently has the worst poverty rate in the European Union, with 25.4% of their population living in poverty, and that that 35% of Romania's elderly population face the risk of poverty and social exclusion. In sum, the emotional hardship from separating from her community and son, the medical hardship of not having access to the proper care, and the financial hardship of not being able to find employment together rise to the level of extreme hardship. Thus, we find that the Applicant has shown that his spouse would suffer extreme hardship if his waiver application is denied.

B. Discretion

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). A favorable exercise of discretion is not warranted for applicants who have been convicted of a violent or dangerous crime, except in extraordinary circumstances. 8 C.F.R. § 212.7(d). The words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation or case law. See 67 Fed. Reg. 78675, 78677-78 (December 26, 2002) (explaining that defining and applying the "violent or dangerous crime" discretionary standard is distinct from determination that a crime is an aggravated felony). Pursuant to our discretionary authority, we understand "violent or dangerous" according to the ordinary meanings of those terms. Black's Law Dictionary (9th ed. 2009), 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." In determining whether a crime is a violent or dangerous crime for purposes of discretion, we are not limited to a categorical inquiry but may consider both the statutory elements and the nature of the actual offense. See *Torres-Valdivias v. Lynch*, 786 F.3d 1147, 1152 (9th Cir. 2015); *Waldron v. Holder*, 688 F.3d 354, 359 (8th Cir. 2012). The Applicant's conviction for assault with an automobile causing serious bodily injury is a dangerous crime because it resulted in serious bodily harm.

We must now consider whether extraordinary circumstances exist in the Applicant's case. 8 C.F.R. § 212.7(d), which codified for purposes of section 212(h)(2) of the Act the discretionary standard first applied to section 209(c) waivers by the Attorney General in *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002), 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, 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-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board determined that exceptional and extremely unusual hardship “must be ‘substantially’ beyond the ordinary hardship that would be expected when a close family member leaves this country.” The Board stated that in assessing exceptional and extremely unusual hardship, the hardship factors used in determining extreme hardship should be considered and all hardship factors should be considered in the aggregate. *Id.* at 63-64.

We find that the Applicant has established that the denial of his application would result in exceptional and extremely unusual hardship. In addition to the hardship factors outlined above, the Applicant and his sons would suffer hardship if the Applicant is denied admission and must relocate to Romania. The record shows that the Applicant also suffers from various medical conditions including circulatory problems, depression, and chronic back pain. Medical documentation states that these conditions are managed by medications, but, as stated above, the country conditions information in the record indicate that over time the Applicant may have difficulty obtaining care in Romania because medical supplies are limited, many doctors are leaving the country, and hospitals lack assistance for the elderly. The Applicant would also experience hardship in Romania because of his age, lack of community ties to the country, lack of family ties there, and the likelihood he will not be able to find employment in Romania. He and his wife are in their 60s, they have not lived in Romania for 15 years, and country reports submitted by the Applicant state that the unemployment and poverty rates in Romania are high. Further, If the Applicant and his spouse were to separate, she would suffer exceptional and extremely unusual hardship. The Applicant and his spouse have been together since high school and have been married for 35 years. They state that they have never been separated. If the Applicant relocates to Romania, his spouse will lose her source of financial support and her medical insurance. She also states that she would be unable to visit her spouse in Romania because of the expense of travel. Moreover, the Applicant’s son states that he would suffer hardship if the family was separated because he would not be able to bear the financial burden of supporting both his mother and his father. Thus, we find that the Applicant has shown that there would be exceptional and extremely unusual hardship as a result of his waiver being denied.

The Applicant has demonstrated extraordinary circumstances, but 8 C.F.R. § 212.7(d) provides further that 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 under section 212(h)(2) of the Act. We must still “balance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on [the alien’s] behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country.” *Matter of Mendez-Morales*, 21 I&N Dec. 296, 300 (BIA 1996).

The Applicant has shown that he warrants the favorable exercise of discretion. The unfavorable factor in the Applicant’s case is his conviction for assault with an automobile. We recognize that the Applicant’s crime caused serious harm. However, there are mitigating circumstances in the Applicant’s case. The New Jersey Police Investigation Report shows that the Applicant’s crime was the result of a traffic accident and an illegal left turn made by the Applicant, and the accident was not the result of alcohol or drug use, excessive speed, or aggressive driving. The Applicant explains that

he did not intend to make an illegal turn, but had recently moved to New Jersey and was unfamiliar with the area and the traffic patterns where the accident occurred.

The favorable factors in the Applicant's case include the hardship he and his family would suffer as a result of his waiver being denied; his record of employment and financial support to his family; his lack of a criminal record outside of the events which led to his conviction; and, as evidenced by letters of recommendation, the Applicant's role as a trustworthy husband, father, and community member. Another favorable factor to be considered in the Applicant's case is the remorse he expresses for the accident. The Applicant expresses remorse in his own statement, and the Applicant's priest relates in a letter how the Applicant suffered emotionally from having caused the accident. Thus, we find that the favorable factors in the Applicant's case outweigh the unfavorable factors such that a favorable exercise of discretion is warranted.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has met that burden. The appeal will be sustained.

ORDER: The appeal is sustained.

Cite as *Matter of O-A-*, ID# 154490 (AAO Mar. 29, 2017)