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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-L-L-G-

DATE: DEC. 1, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h); and § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Director determined that the Applicant was inadmissible for unlawful presence in the United States for more than one year, and for committing crimes involving moral turpitude. The Director further determined that one of the Applicant's convictions, for Assault with a Deadly Weapon, was a violent or dangerous crime for which favorable discretion would not be exercised. The Form I-601 was denied accordingly.

On appeal, the Applicant submits a brief and evidence that his spouse and children receive financial support from [redacted] The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act states, in pertinent part:

> (B) ALIENS UNLAWFULLY PRESENT.-
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> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . .
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> (II) 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 such alien's departure or removal from the United States, is inadmissible.
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> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney

> General or is present in the United States without being admitted or paroled.
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> . . .
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> (v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

In this case, the record reflects that the Applicant entered the United States without being inspected, admitted, or paroled in 1998. The Applicant accrued more than one year of lawful presence from July 8, 2008, upon turning years of age, until October 16, 2012, when he voluntarily departed from the United States. The Applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for more than one year of unlawful presence in the United States. The Applicant does not contest this finding of inadmissibility on appeal.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> (I) 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(h) of the Act states, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if –
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> > (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; or

The record further establishes that on 2012, the Applicant was convicted of Battery with Serious Bodily Injury under California Penal Code (Cal. Penal Code) § 243(d), and Assault with a Deadly Weapon Other than a Firearm under Cal. Penal Code § 245(a)(1). The Applicant is therefore also inadmissible under section 212(a)(2)(A) of the Act, for having been convicted of crimes involving moral turpitude. The Applicant does not contest this finding of inadmissibility on appeal.

The Applicant requires a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Act. However, even if the Applicant establishes that he meets the requirements of these sections, the Secretary may not favorably exercise discretion in his case except in extraordinary circumstances, because the record reflects that the Applicant has been convicted of violent or dangerous crimes. *See* 8 C.F.R. § 212.7(d).

Specifically, 8 C.F.R. § 212.7(d) states:

> The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving 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.

The words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and we are unaware of any precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, *or* any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. The Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in 8 C.F.R. § 212.7(d). We find that the statutory terms "violent or dangerous crimes" and "crime of violence" are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependent on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (Dec. 26, 2002).

Nevertheless, we use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms "violent" and "dangerous." The term "dangerous" is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms "violent" and "dangerous" in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary

denials under the standard described in 8 C.F.R. § 212.7(d). Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual "case-by-case basis." 67 Fed. Reg. at 78677-78.

The Applicant was convicted, under Cal. Penal Code § 243(d), of Battery with Serious Bodily Injury and, under Cal. Penal Code § 245(a)(1), of Assault with a Deadly Weapon Other than a Firearm. Considering the plain language and common meaning of "battery with serious bodily injury" and "assault with a deadly weapon other than a firearm," we concur with the Director that the Applicant's convictions constitute violent or dangerous crimes as contemplated by 8 C.F.R. § 212.7(d). The Applicant does not contest this determination on appeal.

Accordingly, the Applicant must show that "extraordinary circumstances" warrant approval of the waiver. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant's admission would result in exceptional and extremely unusual hardship. 8 C.F.R. § 212.7(d). Finding no evidence of foreign policy, national security, or other extraordinary equities, we will consider whether the Applicant has "clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship" to a qualifying relative. *Id.*

In *Monreal-Aguinaga*, the Board of Immigration Appeals provided additional examples of the hardship factors it deemed relevant for establishing exceptional and extremely unusual hardship:

> [T]he ages, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives. For example, an applicant who has elderly parents in this country who are solely dependent upon him for support might well have a strong case. Another strong applicant might have a qualifying child with very serious health issues, or compelling special needs in school. A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.

23 I&N Dec. at 63-64. . The Board has also noted that "the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by comparing it to the hardship others might face." *Matter of Andazola-Rivas*, 23 I&N Dec. 319, 323 (BIA 2002). Even where an Immigration Judge has found that a respondent's children "would suffer hardship of an emotional, academic and financial nature," and would "face complete upheaval in their lives and hardship that could conceivably ruin their lives," *id.* at 321, the Board has held that such hardships "are simply not substantially different from those that would normally be expected upon removal to a less developed country." *Id.* at 324.

However, in *Matter of Gonzalez Recinas*, the Board clarified that "the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a

serious medical condition, will qualify for relief." 23 I&N Dec. 467, 470 (BIA 2002). The Board found that the hardship factors presented by the respondent—including her "heavy financial and familial burden . . . the lack of support from her children's father, [her U.S.] citizen children's unfamiliarity with the Spanish language, the lawful residence in this country of all of [her] immediate family, and the concomitant lack of family in Mexico"—cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. *Id.* at 472. The Board emphasized that the case was "on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met." *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate in this case. *See Gonzalez Recinas*, 23 I&N Dec. at 469 ("While any hardship case ultimately succeeds or fails on its own merits and on the particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship.").

In this case, the Applicant's U.S. citizen spouse claims that she will experience extreme hardship if she remains in the United States while the Applicant continues to reside abroad as a result of his inadmissibility. She indicates that she and the Applicant have been together for ten years, and since he departed from the United States her life has taken a devastating turn. She states, specifically, that she was diagnosed with cervical cancer, lost her home, and quit her job to take care of her children, born in 2006 and 2009. She declares that while the Applicant was in the United States, they both worked and she had a comfortable lifestyle. She maintains that after the Applicant left the United States she received treatment for cervical cancer and struggled to be both breadwinner and caregiver for her children. She declares that she worked long hours but her income was still not enough to cover her expenses and pay for a babysitter. She asserts that her children developed behavioral problems caused by her absence and separation from the Applicant, so she decided to quit her job, move in with her sister, and look for a job that would allow her to spend more time with her children. She indicates that she found a job but it barely covered her expenses and the money she needed to support the Applicant in Mexico. She further asserts that she is worried that the Applicant is not safe in Mexico. The Applicant's spouse declares that she is anxious about her health and needs financial and emotional support from the Applicant. Letters from family members and friends state that the Applicant's spouse works long hours, struggles to raise her children, and drives 200 miles to Mexico so her children can spend time with their father.

In support of the hardship, the Applicant's spouse provided medical documentation establishing her ongoing treatment for cervical cancer. She also provided a letter from her previous employer stating that the Applicant resigned from her job due to financial and emotional hardship. She further submitted documentation establishing that since 2014, she and her children have received financial support from In addition, she also provided evidence establishing that her children are receiving school-based counseling services and the counselor recommends mental health services for the children. Based on the record, the financial and emotional well-being of the Applicant's spouse and children will continue to be significantly impacted if they remain in the United States while the Applicant resides in Mexico. The hardships presented, when considered cumulatively, are "substantially beyond the ordinary hardship that would be expected" based on one family member's inadmissibility. *Matter of Monreal-Aguinaga*, 23 I&N Dec. at 62. Accordingly,

the hardships to the Applicant's spouse and children that arise from separation do meet the 8 C.F.R. § 212.7(d) "exceptional and extremely unusual hardship" standard.

Regarding relocation abroad to reside with the Applicant as a result of his inadmissibility, the Applicant's spouse indicates that she was born and raised in the United States and wants her children to live in the United States. She asserts that her spouse has not had steady work in Mexico and will not be able to support her and her children. She further declares that she requires ongoing medical care for cervical cancer and the medical professionals in Mexico do not have advanced technology to provide effective treatment. She also states that her children visit a therapist and therapy in Mexico will be unaffordable for them. She maintains that she is worried that their physical safety will be at risk in Mexico.

The Applicant has submitted a U.S. Department of State Human Rights Report on Mexico establishing that violence is a significant concern in Mexico. The U.S. Department of State has issued a Travel Warning for Mexico due to threats to safety and security posed by organized criminal groups. The record establishes that the Applicant's spouse and children were born and raised in the United States, and long-term separation from their community, extended family, and the affordable and effective medical professionals familiar with the Applicant's spouse's treatment for cervical cancer, and mental health professionals familiar with his children, will cause "exceptional and extremely unusual hardship" to his spouse and children that meets the 8 C.F.R. § 212.7(d) elevated hardship standard.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that his U.S. citizen spouse and children would suffer extreme hardship were the Applicant unable to reside in the United States. We further find that "exceptional and extremely unusual hardship" has also been established.

As stated in the regulation at 8 C.F.R. § 212.7(d), "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." Here, the gravity of the Applicant's criminal conduct is considerable. In 2012, approximately three years ago, the Applicant was convicted of assault with a deadly weapon and battery with serious bodily injury. The Applicant's violent acts and the recency of the convictions raise serious concerns regarding his character and the risk that he poses to others in the United States.

The Applicant has expressed remorse for his wrong doing, and states that he wants to be a good husband and father. He indicates that he now works, saves money, and attends church, and has been reformed. The Applicant provided letters from his friends, his spouse's family members, his employers, and his minister on his behalf. However, as many of the letters reference the Applicant as being a person of good moral character before his 2012 conviction, the probative value of the letters in establishing his rehabilitation post-conviction is greatly diminished.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a

preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The Applicant committed two violent crimes approximately three years ago, and he has not provided sufficient evidence to establish rehabilitation. We further note additional negative factors in this case, including the Applicant's entry to the United States without authorization, his placement in removal proceedings, and periods of unlawful presence and employment in the United States. We find that the Applicant has not demonstrated that he merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d).

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of J-L-L-G-*, ID# 14499 (AAO Dec. 1, 2015)