

(b)(6)



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

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

MATTER OF N-P-

DATE: NOV. 12, 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 Thailand, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record establishes that on [REDACTED] 1997, the Applicant plead guilty and was convicted for Planning to Set Fire (Arson), in violation of Sections 217, 218(1), as well as Section 80, of the Criminal Code of Thailand. The Applicant seeks a waiver of inadmissibility under section 212(h) to reside in the United States with her U.S. citizen fiancé.

The Director determined that the Applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for committing a crime involving moral turpitude. The Director further noted that the Applicant committed the crime more than fifteen years ago, and established the requirements under section 212(h)(1)(A) of the Act for a waiver of inadmissibility. Nevertheless, the Director determined that the Applicant committed a violent or dangerous crime and he would not favorably exercise discretion. The Form I-601 was denied accordingly.

On appeal, the Applicant submits a brief and previously submitted evidence. The entire record was reviewed and considered in rendering a decision on the 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-

(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 provides, 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 -

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that--

- (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(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

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

To begin, we note that on appeal the Applicant contends that the King of Thailand pardoned her. Foreign pardons do not eliminate a criminal conviction for immigration purposes. *See, e.g., Matter of Marino*, 15 I&N Dec. 284, 285 (BIA 1975) (citing *Palermo v. Smith*, 17 F.2d 534, 535 (2d Cir. 1975); *Matter of Adamo*, 10 I&N Dec. 593 (BIA 1964); *Matter of B-*, 7 I&N Dec. 155 (BIA 1956); *Matter of M-*, 9 I&N Dec. 132, 134 (BIA 1960); *Matter of G-*, 5 I&N Dec. 129 (BIA 1953)).

As noted above, the Director found that the Applicant established the requirements under section 212(h)(1)(A) of the Act for a waiver of inadmissibility. The Director noted that the Applicant's criminal activity took place over 15 years ago, in 1997, indicating rehabilitation, and the Applicant's admission did not appear to be contrary to the national welfare, safety, or security of the United States. Nevertheless, as correctly noted by the Director, even if the Applicant meets the section 212(h)(1)(A) requirements, the Secretary may not favorably exercise discretion, except in extraordinary circumstances, because the record reflects that the Applicant committed a violent or dangerous crime. *See* 8 C.F.R. § 212.7(d).

The Applicant maintains that the crime which she committed is not as serious as the crime in *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002). She states that she set fire to an occupied building knowing

that the occupant would extinguish the fire. A favorable exercise of discretion is limited in the case of an applicant who has been convicted of a violent or dangerous crime. 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 record establishes that the Applicant intentionally set fire to a residence, at night, by pouring gasoline at the door of the residence and lighting it. The Board of Immigration Appeals found that a person commits an act of violence, within 18 U.S.C. § 16, if he or she intentionally starts a fire and by that act recklessly places another person in danger of serious physical injury. *Matter of Palacios-Pinera*, 22 I&N Dec. 434, 437 (BIA 1998). The Applicant intentionally set fire to an occupied residence at midnight, placing the home's occupant, others nearby, and those responding to the fire, in danger of serious physical injury. We thus concur with the Director that the Applicant's crime, Planning to Set Fire, therefore qualifies as a violent or dangerous crime.

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 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.”).

The Applicant’s U.S. citizen fiancé asserts that he will experience extreme hardship if he remains in the United States while his fiancée remains abroad as a result of inadmissibility. In his letter, he states that he does not have enough vacation days to maintain a relationship with the Applicant or start a family with her. He indicates that he worries about his mother’s health problems and would be at ease if the Applicant were his mother’s caregiver. In her letter, his mother states that she has difficulty walking, her other son is unable to help her due to his work schedule, and she cannot afford a caregiver. He also states that he wishes to start a family and he thus needs the Applicant by his side.

In support of his hardship claim, the Applicant’s fiancé submitted medical records establishing that his mother takes medication for knee and shoulder pain, and diabetes. He also provided a letter from his employer establishing that he has a supervisory position and earns \$20 an hour. While we acknowledge the Applicant’s fiancé’s contention that he will experience emotional hardship were he to remain in the United States while his fiancée remains abroad, the record does not establish the severity of this hardship or the effects on his daily life. Nor has any supporting documentation been submitted from the Applicant’s fiancé’s mother’s treating physician outlining the specific hardships she, and by extension the Applicant’s fiancé, will experience were the Applicant unable to reside in the United States. The hardships presented, even when considered cumulatively, are not “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 fiancé that arise from separation do not meet the 8 C.F.R. § 212.7(d) “exceptional and extremely unusual hardship” standard.

Regarding relocation with the Applicant abroad as a result of inadmissibility, the Applicant’s fiancé maintains that he does not speak the Thai language and would have difficulty assimilating. He further declares that he will not find a job and will lose the “sweat equity” which he has in his career. He asserts that he would have to separate from his mother when she needs his help. He indicates that the healthcare in the United States is better than Thailand, and that since 2006, Thailand has been unstable politically.

In view of the Applicant’s fiancé’s ties to the United States, relocation to Thailand would impose emotional and financial hardships on him. In addition, the record establishes that the Applicant’s fiancé is thirty-eight years old, and has spent his life in the United States. His family ties to the

United States include his parents and brother. The evidence in the record, however, does not demonstrate that the emotional and financial hardships in this case produce a “truly exceptional situation” that would meet the exceptional and extremely unusual hardship standard. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 at 62. We note that the Applicant has not submitted any documentation establishing that he would not be able to obtain gainful employment abroad. Nor has it been established that the Applicant's fiancé would be unable to travel to the United States to visit his relatives, or alternatively, that they would not be able to visit him abroad. 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). Accordingly, the hardships to the Applicant's fiancé that arise from relocation do not meet the 8 C.F.R. § 212.7(d) elevated hardship standard.

In this case, although the Applicant established her eligibility for a waiver under section 212(h)(1)(A) of the Act, she did not demonstrate that she merits a waiver of discretion under 8 C.F.R. § 212.7(d).

ORDER: The appeal is dismissed.

Cite as *Matter of N-P-*, ID# 14164 (AAO Nov. 12, 2015)