U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-M-C-

DATE: JAN. 28, 2016

APPEAL OF KENDALL FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Cuba, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Kendall Field Office Director, Miami, Florida, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

In a decision dated June 1, 2015, the Director determined that the Applicant was inadmissible for committing crimes involving moral turpitude. The Director also determined that as the Applicant had been convicted of a violent or dangerous crime, he had not established exceptional and extremely unusual hardship. The Director denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant submits a brief. 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-
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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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> (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that--
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> (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

The record establishes that on 1998, the Applicant was convicted under Florida Statutes (Fla. Stat.) § 8A-276(B) of Commercial Vehicle Marking Violation. On 2003, the Applicant was convicted under Fla. Stat. § 810.02(2)(a) of Burglary with Assault or Battery, under Fla. Stat. § 787.02(2) of False Imprisonment, under Fla. Stat. § 784.021(1)(A) of Aggravated Assault With a Deadly Weapon, and under Fla. Stat. § 784.048(3) of Aggravated Stalking. On 2008, the Applicant was convicted under Fla. Stat. § 812.014(2) of Grand Theft. On 2009, the Applicant was convicted under Fla. Stat. § 812.014(2)(a) of Grand Theft in the First Degree; under Fla. Stat. § 812.014(2)(c)(6) of Grand Theft in the Third Degree/Vehicle; under Fla. Stat. § 316.1935(1) of Fleeing or Attempting to Elude a Law Enforcement Officer; and under Fla. Stat. § 843.02 of Resisting Officer Without Violence.

On appeal, the Applicant does not dispute that Aggravated Assault with a Deadly Weapon is a crime involving moral turpitude.[1] The Applicant requires a waiver of inadmissibility under section 212(h) of the Act. However, even if the Applicant establishes that he meets the requirements of this section, 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).

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[1] The Applicant asserts that his , 2003 conviction counts as only one crime involving moral turpitude. The Applicant incorrectly characterizes as a single conviction the four separate crimes for which he was convicted on 2003. Irrespective of the Applicant's contention on appeal, he remains inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act. The Applicant further declares on appeal that his theft convictions do not meet the definition of a crime involving moral turpitude based on recent U.S. Supreme Court and the Board of Immigration Appeals decisions. The Applicant is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as detailed above, and requires a waiver of inadmissibility under section 212(h) of the Act. It is thus not necessary for this office to determine at this time if his theft convictions constitute crimes of moral turpitude.

On appeal, counsel maintains that the crime which the Applicant committed is not as serious as the crime in *Matter of Jean,* 23 I&N Dec. 373 (A.G. 2002). He asserts that the Applicant's crime involved words and gestures and his actions had not physically injured anyone. 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 Applicant was convicted, under Fla. Stat. § 784.021(1)(A), of Aggravated Assault With a Deadly Weapon. Considering the plain language and common meaning of "aggravated assault with a deadly weapon," we concur with the Director that the Applicant's crime, Aggravated Assault With a Deadly Weapon, qualifies as a violent or dangerous crime. Collateral attacks upon an applicant's conviction "do not operate to negate the finality of [the] conviction unless and until the conviction is overturned." *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996). We "cannot go behind the judicial record to determine the guilt or innocence of the alien." *Id.* (citing *Matter of Fortis*, 14 I&N Dec. 576, 577 (BIA 1974); *see also Matter of Khalik*, 17 I&N Dec. 518, 519 (BIA 1980). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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 (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 spouse asserts that she will experience extreme hardship if she remains in the United States while her spouse relocates abroad as a result of his inadmissibility. The Applicant's spouse declares that she has been together with the Applicant since 2004 and has a good relationship with him, and he has been a good father to her sons from a prior relationship, born in and She indicates that long-term separation from the Applicant would cause her and her sons hardship. She further states that she relies on the Applicant financially. She states, specifically, that she and the Applicant have their own truck driving company. She declares that she handles administrative matters while the Applicant does the actual driving, and their family business, her sole means of income, will fail without the Applicant's help. In his affidavit, the Applicant asserts that when he was in jail his spouse struggled financially and needs his financial help.

In support of the hardship claims, the Applicant submitted 2013 income tax records establishing that his spouse owns an office clerical business that had gross receipts or sales of $24,000, and the Applicant was a driver for his own truck driver business, which had gross receipts of $16,120. The Applicant has not established that his spouse would be unable to financially support herself. Nor has any supporting documentation been submitted to establish that the truck driving company would not be able to continue operations without the Applicant's daily presence. Alternatively, the Applicant has not demonstrated that he would be unable to obtain gainful employment abroad that would permit him to assist his spouse financially if necessary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Although we acknowledge the Applicant's spouse's assertion that she will experience emotional and financial hardship were she to remain in the United States while her spouse relocates abroad, the record does not establish the

severity of this hardship or the effects on her daily life. Based on a totality of the circumstances, we find that the Applicant has not established that his spouse would experience extreme hardship were she to remain in the United States while he relocates abroad due to his inadmissibility. In addition, we find that the hardships to the Applicant's spouse that arise from separation do not meet the heightened "exceptional and extremely unusual hardship" standard set forth in 8 C.F.R. § 212.7(d) to warrant a favorable exercise of discretion.

Regarding relocation with the Applicant abroad as a result of his inadmissibility, the Applicant's spouse asserts that she was born and raised in the United States and has no family ties to Cuba, and will be forced to separate from her family in the United States. She further asserts that she is not familiar with the customs and culture in Cuba, and she is worried that she will be discriminated against in Cuba, her physical safety will be at risk, and she will not be able to survive financially in Cuba. The record establishes that the Applicant's spouse is years old, and was born and raised in the United States and has no ties to Cuba. Long-term separation from her family, including her two sons, her community, and her gainful employment would cause her extreme hardship. The evidence in the record, however, does not demonstrate that the hardships in this case with respect to relocation would produce a "truly exceptional situation" that would meet the exceptional and extremely unusual hardship standard to warrant a favorable exercise of discretion. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 at 62. We note that the Applicant has not provided any documentation in support of his spouse's statements regarding discrimination, her safety, and inability to obtain gainful employment in Cuba. Nor has the Applicant established that his spouse would be unable to travel to the United States to visit her relatives. Accordingly, although extreme hardship has been established with respect to relocation, the hardships to the Applicant's spouse that arise from relocation do not meet the heightened "exceptional and extremely unusual hardship" standard set forth in 8 C.F.R. § 212.7(d) to warrant a favorable exercise of discretion.

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 not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of C-M-C-*, ID# 15572 (AAO Jan. 28, 2016)