



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

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

MATTER OF N-R-F-

DATE: OCT. 11, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of the Dominican Republic, 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 (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives; or, where the activities for which the foreign national is inadmissible occurred more than 15 years ago, if the foreign national's admission would not be contrary to the national welfare, safety, or security of the United States, and the foreign national has been rehabilitated.

The Director, Nebraska Service Center, denied the application. The Director concluded that the evidence submitted did not demonstrate that the hardship to the Applicant's qualifying relative rose to the level of exceptional and extremely unusual hardship.

The matter is now before us on appeal. In the appeal, the Applicant's spouse submits additional evidence and claims that the admission of the Applicant would not be contrary to the national welfare, safety and security of the United States and that the Applicant has been rehabilitated. The Applicant's spouse also indicates that she will experience exceptional and extremely unusual hardship if the Applicant is denied admission.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for a crime involving moral turpitude. Specifically, the Applicant was convicted of assault resulting in the death of another person in the Dominican Republic. 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 may seek a 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 discretionary 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.

II. ANALYSIS

The issues presented on appeal are whether admission of the Applicant would be contrary to the national welfare, safety, or security of the United States and that he has been rehabilitated; and whether the Applicant has met the higher standard of discretion for having been convicted of a violent or dangerous crime and established the presence of extraordinary circumstances, such as exceptional and extremely unusual hardship. The Applicant's spouse claims on appeal that the Applicant has been rehabilitated and his admission would not be contrary to the national welfare, safety or security of the United States. The Applicant's spouse also claims that the denial of the Applicant's waiver would result in exceptional and extremely unusual hardship. We find the record to demonstrate that the Applicant's admission would not be contrary to the national welfare, safety or security of the United States, and that he has been rehabilitated. The record does not demonstrate that the Applicant has established that he or his spouse would experience exceptional and extremely unusual hardship or otherwise establish the presence of extraordinary circumstances. We will dismiss the appeal.

A. Waiver

The last act rendering the Applicant inadmissible under section 212(a)(2)(A) of the Act occurred in 1999, more than 15 years ago. Consequently, the Applicant may demonstrate eligibility for a waiver of inadmissibility pursuant to either section 212(h)(1)(A) or section 212(h)(1)(B) of the Act. To meet the requirements of section 212(h)(1)(A) of the Act, the Applicant must show that 1) admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and 2) the Applicant has been rehabilitated.

The record includes evidence relevant to establishing the Applicant's rehabilitation and whether his admission would be contrary to the national welfare, safety and security of the United States, including statements from the Applicant, his spouse and members of the Applicant's community. The record also includes statements from the Applicant's employer and a letter from local authorities in the Dominican Republic. The record also includes, but is not limited to: employment letters for the Applicant; letters from friends, family members, employers and associates of the Applicant and his spouse; tax returns and pay stubs; medical records; and copies of credit card bills, utilities invoices and documentation regarding financial obligations.

Matter of N-R-F-

With regard to whether or not the Applicant's admission would be contrary to the national welfare, safety and security of the United States, the record contains sufficient evidence to demonstrate that the Applicant is married and has been gainfully employed since he was released from confinement. The Applicant's spouse states in her letter that the Applicant has been emotionally supportive of her and her family and has worked to become a productive member of society. Another statement in the record indicates the Applicant has been a long-standing member of the [REDACTED] in the Dominican Republic. A statement from the board of members in [REDACTED] Dominican Republic, states that the Applicant is a cooperative individual who participates in cultural and sports activities and has shown exemplary behavior. The record also contains a letter from a business, [REDACTED] New Jersey, stating that they have an open position for employment for the Applicant as soon as he arrives in the United States.

This evidence is sufficient to demonstrate that the Applicant's admission would not be contrary to the national welfare, safety or security of the United States.

Other letters submitted into the record state that the Applicant is a person of moral character and is a religious person. The Applicant has expressed remorse for his crime, and states that he is sorry for the pain and embarrassment that his confinement caused his family. There is also a statement from local authorities in the Dominican Republic stating that the Applicant does not have any pending criminal charges against him. Based on this evidence we find the record to support a conclusion the Applicant has been rehabilitated.

B. Discretion

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 record establishes that the Applicant has been convicted of assault resulting in death. While the Applicant claims he struck an individual on the neck with a tire iron in self-defense, the record does not contain any court records pertaining to his conviction to support his assertions concerning the specific circumstances of the offense. The record contains a translated copy of section 309 of the Dominican Republic criminal code which states that a person will be convicted of assault under that provision if they voluntarily cause injury, strike, commit an act of violence against another party, and that if the act caused the death of the injured party, the penalty will be long-term imprisonment. We find the record to establish that the Applicant was convicted of a violent or dangerous crime.

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.

The Applicant has not claimed that foreign policy, national security, or other extraordinary equities exist and has not provided sufficient evidence to demonstrate that denial of the application would result in exceptional or extremely unusual hardship to himself or his spouse. The Applicant's spouse indicates in her statements that she is experiencing emotional, financial and medical hardship due to separation from the Applicant. She states that she suffers from major depression, Diabetes Mellitus type II, Hypertension, tension headaches, Menorrhagia, hyperlipidemia and Vitamin D deficiency. She explains that she does not earn sufficient income as a home healthcare aide to meet her financial obligations and that she needs the financial support of her spouse. She further explains that she is suffering from major depression which results in crying spells, irritability and insomnia. The Applicant's spouse also states that she is close with her family members that reside in the United States, including her brother who suffers from kidney disease and whom she helps care for.

With regard to the psychological hardship of the Applicant's spouse, the record includes two examination reports discussing her mental health. The initial report, from January 2014, indicates the Applicant's spouse is suffering from Major Depressive Disorder, Moderate, Single Episode. The second report, also from January 2014, indicates she is suffering from a Major Depressive Episode, Recurrent Severe, with Anxious Distress and is experiencing symptoms of sadness, lack of motivation, sleeping difficulties, appetite disturbance, loss of energy and self-esteem, and irritability.

Although there are minor inconsistencies between these two reports regarding the diagnosis, collectively they are sufficient to demonstrate that the Applicant's spouse is experiencing psychological hardship due to the Applicant's inadmissibility.

With regard to financial hardship, the record contains copies of credit card statements, tax returns and other financial records, a statement from the Applicant's spouse's landlord, a budgetary worksheet, pay stubs, an employment letter for the Applicant's spouse and an approval notice for participation in a state run food stamp program. There is a letter to the Applicant's spouse in the record indicating that the rent for the apartment in which she resides was late for a period of three months. The record does not contain a copy of a lease for the property where the Applicant's spouse resides, and it cannot be corroborated that she is solely financially responsible for the monthly rent of the apartment. There is also evidence that the Applicant's spouse is receiving financial assistance in the form of food stamps. Pay stubs and tax returns in the record corroborate the Applicant's spouse's claims that she is earning ten dollars an hour as a home healthcare aide, but there is insufficient evidence to support other claimed financial obligations listed on her budgetary worksheet such as gas, food or clothing. The evidence submitted into the record is sufficient to demonstrate that the Applicant's spouse is experiencing financial hardship, but the record does not make clear that this is related to the Applicant's inadmissibility because there is no indication that he has ever resided in the United States or provided financial assistance to his spouse or that she would not experience the same hardship if she were not married to the Applicant.

With regard to the Applicant's spouse's brother and his medical condition, the record contains a letter and two medical records. The medical records indicate that that he suffers from a liver disease. The letter from the Applicant's spouse's brother indicates that he resides with her and states that she has been an important source of support for him, assisting with his medications and the side effects of dialysis. He states that he is highly dependent on her. This evidence is informative, but does not provide a complete picture of the circumstances surrounding the physical or financial support the Applicant's spouse provides for her brother, or to what degree he is actually physically dependent on her.

With regard to the medical conditions of the Applicant's spouse, the record contains physician visitation reports and a letter from the Applicant's spouse's doctor. The visitation reports indicate the Applicant's spouse's visited her doctor for complaints regarding throat pain, diabetes, tension headaches and Menorrhagia. The letter from the Applicant's doctor is brief, but corroborates that she is being treated for diabetes mellitus type 2, hypertension, tension headaches, hyperlipidemia and vitamin d deficiency. This evidence is sufficient to corroborate the Applicant's spouse's claims that she suffers from several medical conditions, but it does not indicate the depth or degree of her medical conditions or reflect her ability to function on a daily basis. Other evidence in the record

Matter of N-R-F-

indicates that the Applicant's spouse is able to maintain her employment and to provide physical assistance to her brother who suffers from a liver disease.

When this evidence is considered in the aggregate, we find that the hardships do not constitute exceptional and extremely unusual hardship if the Applicant's spouse remains in the United States without the Applicant.

The Applicant's spouse has claimed that she will experience psychological, physical and financial hardship if she were to relocate to the Dominican Republic with the Applicant. She explains that she and the Applicant would not be able to find gainful employment to support themselves and would have to reside in a small apartment with members of the Applicant's family. She states that her son would lose the educational opportunities available to him in the United States. She further claims that she would not be able to find adequate healthcare to meet her medical needs and would lose the medical insurance coverage she has in the United States. She also claims that she would have to sever the family ties she has in the United States upon relocation.

As discussed above, the record contains sufficient documentation to corroborate that the Applicant's spouse suffers from several medical conditions. However, the evidence provided does not indicate the degree or severity of the conditions, and does not indicate that she is unable to maintain her employment or continue her other daily activities. The record does not contain any documentation in support of her claim that she would be unable to find adequate medical care in the Dominican Republic. There is also no evidence that she or the Applicant would be unable to find employment in the Dominican Republic, or that her son would lose any educational opportunity available to him in the United States if he relocated. The record indicates that the Applicant is currently employed for the [REDACTED]. The record supports the Applicant's spouse's claim that she would have to sever her family ties in the United States, including those with her brother, for whom she provides support. An examination of the hardship factors in the aggregate indicates that the Applicant's spouse would experience hardship upon relocation to the Dominican Republic, but the record does not establish that these hardships rise to the level of exceptional and extremely unusual hardship.

The record indicates that the Applicant's spouse would experience hardship if the Applicant is denied admission. However, the record does not support that the Applicant or his spouse will experience hardships that rise to the level of exceptional or extremely unusual hardship if the Applicant is denied admission.

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 not met that burden. The Applicant is inadmissible

Matter of N-R-F-

for having been convicted of a crime involving moral turpitude and has been convicted of a violent or dangerous crime. The record does not establish the presence of exceptional and extremely unusual hardship or otherwise establish that extraordinary circumstances are present. We will dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of N-R-F-*, ID# 121628 (AAO Oct. 11, 2016)