



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

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

MATTER OF M-W-J-

DATE: SEPT. 26, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native of Burma and citizen of the United Kingdom, seeks a waiver of the ground of inadmissibility for crimes 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 that of a lawful permanent resident (LPR) 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.

The Director, Nebraska Service Center denied the application. The Director concluded that although the Applicant had shown that his spouse was suffering extreme hardship, he did not warrant the favorable exercise of discretion.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and states that the Director erred in not finding that he warranted a favorable exercise of discretion.

Upon *de novo* review, we will dismiss the appeal. The Applicant does not warrant the favorable exercise of discretion.

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for crimes involving moral turpitude, specifically three counts of reckless endangerment. 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)(B) of the Act provides for a discretionary 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 issue on appeal is whether the Applicant warrants a favorable exercise of discretion. The Applicant is not contesting the finding of inadmissibility, a finding that is supported by court documentation of his convictions of three counts of reckless endangerment. In addition, the Director found that the Applicant had shown his spouse would suffer extreme hardship as a result of his inadmissibility. We will not disturb this finding. On appeal, the Applicant submits additional documentation and states that he does warrant a favorable exercise of discretion. He states that the Director erroneously considered information about his criminal case that went beyond the record of conviction. The Applicant asserts that we cannot consider dismissed charges when weighing discretionary factors and we can only give weight to factual allegations. We disagree with the Applicant's assertions and find that he does not warrant a favorable exercise of discretion.

A. 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). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

Although the Applicant claims we erred in considering information about his crime that went beyond the record of conviction, the factors that may be considered when evaluating whether an applicant warrants a favorable exercise of discretion are broad and are not limited to the record of conviction when a criminal record is being considered. Adverse factors include the nature and underlying circumstances of the inadmissibility ground at issue and other evidence indicative of bad character or undesirability. *See Mendez-Morales, supra*, at 301.

The favorable factors in the Applicant's case include his family ties to the United States. The record shows that the Applicant has a son, daughter, spouse, and grandchildren who are U.S. citizens. Other favorable factors in the Applicant's case include: the hardship his family is experiencing as a result of his inadmissibility, his longtime residence in the United States, his former financial ties to the United States, and the lack of any criminal record beyond his criminal convictions in 2005.

The unfavorable factors in the Applicant's case surround his criminal convictions, the nature of these convictions, the seriousness of the underlying circumstances involved in his convictions, and the lack of documentation showing that the Applicant has been genuinely rehabilitated. The Applicant states that he was convicted of having unprotected sex with numerous women who were part of his hypnotherapy business and his life in general. He states that he was not convicted of sexual assault and that the statements from the victims of his crimes should not be considered. We find that the victims' statements, which were made during his sentencing hearing, and court records concerning the factual allegations surrounding his convictions are evidence of the underlying nature of his offense and may be considered. This evidence shows that the Applicant practiced hypnotherapy for several years, and in the course of this practice he had sexual relations with six to seven of his patients. Court transcripts indicate that these patients came to the Applicant to receive hypnotherapy for serious psychological problems based on traumas they had suffered in the past. The Applicant admits he videotaped sexual encounters with these women without their knowledge. Victims' statements show that many of these women suffer continued psychological and physical symptoms as a result of their encounters with the Applicant. In his statement, dated January 2016, the Applicant fails to acknowledge the seriousness of his actions and the consequences these events had on the women involved. He states that he regrets having extramarital affairs and not having more self-control. In addition, the Applicant submitted a letter from his criminal defense attorney in support of his waiver application. The letter states that the Applicant believed he did nothing wrong and minimizes the seriousness of the crime and its effect on the victims, stating the women "became upset and went to the police" when they learned about his "nonmonogamous lifestyle."

The record does not indicate that the Applicant recognizes any harm that his actions have caused to his victims or that he has been rehabilitated. Thus, given the Applicant's criminal conviction and the serious nature of the offense, as well as the lack of evidence he has taken responsibility for his actions or rehabilitated, we find that the favorable factors do not outweigh the unfavorable factors in his case. A favorable exercise of discretion is not warranted.

B. Violent or Dangerous Crime

The record reflects that the Applicant has been convicted of a "violent or dangerous crime." Thus, the Applicant must also meet the requirements of 8 C.F.R. § 212.7(d) to warrant a favorable exercise of 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).

At the time of the Applicant’s conviction, Connecticut General Statute section 53a-63 stated that a person was guilty of reckless endangerment when, with extreme indifference to human life, they recklessly engage in conduct which creates a risk of serious physical injury to another person. Because the Applicant was convicted of conduct involving extreme indifference to human life that created a risk of serious physical injury to another person, his convictions are dangerous crimes. The Applicant must show that extraordinary circumstances exist in his 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.

Even if the Applicant demonstrated extraordinary circumstances, 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).

In the Applicant’s case, even without applying the heightened standard for a favorable exercise of discretion under 8 C.F.R. § 212.7(d), the Director concluded that a favorable exercise of discretion was not warranted. As discussed above, we also find that the favorable factors do not outweigh the unfavorable factors in the Applicant’s case, and thus even if extraordinary circumstances were shown, the record does not establish 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 not met that burden. He does not warrant the favorable exercise of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of M-W-J-*, ID# 123553 (AAO Sept. 26, 2016)