



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

04-1402
Carr
A Not
Scam
L
A

Cox, Theodore N.
Law Office of Theodore N. Cox
401 Broadway, Suite 701
New York, NY 10013

DHS/ICE Office of Chief Counsel - NYC
26 Federal Plaza, Room 1130
New York, NY 10278

Name: L [REDACTED] R [REDACTED] P [REDACTED]

A [REDACTED]

Date of this notice: 1/14/2011

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:

Cole, Patricia A.
Filppu, Lauri S.
Pauley, Roger

Falls Church, Virginia 22041

File: A [REDACTED] - New York, NY

Date: JAN 14 2011

In re: [REDACTED]

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Theodore N. Cox, Esquire

ON BEHALF OF DHS: Jeffrey E. Blivaiss
Assistant Chief Counsel

CHARGE:

Order: Sec. 241(a)(4), I&N Act [8 U.S.C. § 1251(a)(4)] -
Convicted of crime involving moral turpitude

APPLICATION: Waiver of inadmissibility

The respondent appeals the Immigration Judge's November 3, 2009, decision denying his application for a waiver of inadmissibility under former section 212(c) of the Immigration and Nationality Act, 8 U.S.C. § 1182(c). The appeal will be sustained.¹ The record will be remanded to the Immigration Judge for background and security checks.

In deciding whether an alien warrants a waiver under former section 212(c) of the Act in discretion, the Immigration Judge is required to fairly balance all of the adverse factors of record evidencing the alien's undesirability as a permanent resident with any existing social and humane considerations. *See Matter of Marin*, 16 I&N Dec. 581 (BIA 1978). Favorable factors include proof of long term residence in the United States, evidence of hardship to the respondent's family, service in the armed forces, a history of employment, the existence of property or business ties, service to the community, and other evidence of genuine rehabilitation. *See id.* As noted by the Immigration Judge, in a case wherein the alien has committed a "serious" crime, he bears the burden of demonstrating unusual or outstanding equities in his favor. *Id.*; *see also Matter of Buscemi*, 19 I&N Dec. 628 (BIA 1988). The respondent is not exempt from this burden inasmuch as he was convicted for the offense of first-degree manslaughter in violation of New York Penal Law section 125.20.

¹ Although the respondent titles his appellate filing as "Brief and Motion to Remand," he seeks a remand solely for reconsideration of his application for a waiver under former section 212(c) of the Act. The issue is moot.

In rendering his decision, the Immigration Judge considered the respondent's equities including his genuine rehabilitation, his United States citizen wife and adult stepchildren, his many letters of reference, his steady employment, and his payment of taxes while in the United States (I.J. at 11). The Immigration Judge also considered the poor state of the respondent's health and that of his wife as well as his wife's current inability to work (I.J. at 11). The Immigration Judge also noted the willingness of the respondent's wife to return to Argentina with him and the lack of any hardship in this case (I.J. at 12). On balance, the Immigration Judge found that the seriousness of the respondent's manslaughter conviction, e. [REDACTED] other human life, his disregard for the immigration laws of this country, and his failure to appear for his deportation proceedings in 1981 could not be outweighed by the positive factors in his case (I.J. at 12).²

We find that this is a very close case. We agree that the respondent's conviction for first-degree manslaughter is serious, but we recognize that the conviction occurred 34 years ago, and the respondent has demonstrated genuine rehabilitation. The respondent has now been in the United States for 35 years and has very strong family ties, as noted by the Immigration Judge (I.J. at 11). In addition to these equities, both the respondent and his wife are in poor health. Even given the diminished weight given to the equities by the Immigration Judge in light of the respondent's prior immigration history and seriousness of his conviction, we find that these equities are quite significant and, when considered cumulatively, meet the "unusual or outstanding" standard that applies in this case.³ Under the unique circumstances of this case, we find that the respondent sustained his burden of proof for a waiver under former section 212(c) of the Act and that he should be granted the relief. See 8 C.F.R. § 1003.1(d)(3)(ii) (*de novo* review).

Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The respondent has met his burden of proof for relief under former section 212(c) of the Act.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).



FOR THE BOARD

² In this regard, the Immigration Judge noted that the respondent had been placed into proceedings numerous times for numerous violations, that he continued to return to the United States illegally, and the length of time between his failure to appear in 1981 and his motion to reopen in 2007 (I.J. at 12).

³ Notably, the Immigration Judge did not make specific findings of fact regarding the circumstances surrounding the respondent's conviction.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A [REDACTED] - New York, NY

Date: JAN 14 2011

In re: R [REDACTED]

DISSENTING OPINION: Roger A. Pauley

I respectfully dissent and would affirm the Immigration Judge. *See Matter of K-A-*, 23 I&N Dec. 661, 666 (BIA 2004).


BOARD MEMBER