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U.S. Citizenship
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OCT 24 2005

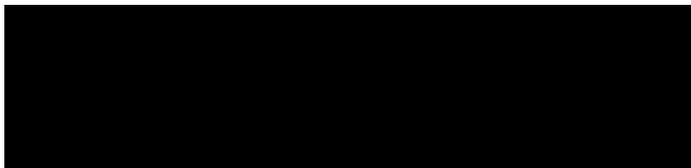
IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, MD denied the waiver application and the Administrative Appeals Office (AAO) in Washington, DC dismissed the appeal. The matter is now before the AAO on motion to reconsider. The motion will be granted and the previous decisions affirmed.

The record reflects that the applicant is a native and citizen of England who was found to be inadmissible to the United States (U.S.) under section 212(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2), for having been convicted of a crime involving moral turpitude. The applicant is married to a citizen of the United States. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States and adjust his status to that of a lawful permanent resident.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application accordingly. The AAO affirmed the district director's decision on appeal.

In the present motion to reconsider counsel asserts that the AAO misinterpreted the law in finding that the applicant had been convicted of a crime involving moral turpitude (CIMT) and that the AAO did not properly and fully consider the evidence supporting the applicant's claim that his removal would result in extreme hardship to the applicant's United States citizen wife.

The first issue raised in the motion to reconsider is whether the AAO misinterpreted the law in finding that the applicant had been convicted of a CIMT. Section 101(a)(48) of the Act, 8 U.S.C. § 1101(a)(48), states:

- (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –
 - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
 - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.
- (B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

Counsel asserts that the criminal charge brought against the applicant in Italy for child molestation did not result in a criminal charge for immigration purposes because the Italian court did not enter a formal judgment of guilt and the applicant did not enter a plea of guilty or nolo contendere, or admit to sufficient facts to warrant a finding of guilt. In the motion to reconsider, counsel quotes from a Berlitz translation of *Judgment No. 499*, the Constitutional Court, November 23, 1995, but edits out a relevant section.

Counsel submitted the Berlitz translation of *Judgment No. 499* in support of the initial waiver application. The section in the motion to reconsider reads:

A judgment provided for by Article 444 of the Code of Criminal Procedure certainly cannot be recognized as having the character of a true and proper judgment of guilt as it is characterized by its negotiated basis and the resulting absence of full consideration of the facts and of the evidence that, in a normal judgment, constitutes the necessary premise for sentencing...the reservation of the various provisions of law prevent it from having its usual effects, among them indeed “effectiveness in civil or administrative cases.” *Motion to Reconsider, at 2.*

In contrast to what is quoted in the motion to reconsider, the same section of Judgment No. 499 without edits reads as follows:

The fact is, the judgment provided for by Article 444 of the Code of Criminal Procedure certainly cannot be recognized as having the character of a true and proper judgment of guilt as it is characterized by its negotiated basis and the resulting absence of full consideration of the facts and of the evidence that, in a normal judgment constitutes the necessary premise for sentencing. Nevertheless, it is appropriate to consider that the following first paragraph of Article 445 of the Code of Criminal Procedure *expressly makes it comparable to “a pronouncement of guilt”* while make reservation of the various provisions of law that prevent it from having its usual effects, among them indeed “effectiveness in civil or administrative cases.” *Berlitz Translation, TME060401 at 8 (emphasis added).*

The AAO finds that the fact that Article 445 expressly makes judgments under Article 444 “comparable to ‘a pronouncement of guilt’” is sufficient to find that such judgments are “convictions” as defined by section 101(a)(48) of the Act, 8 U.S.C. § 1101(a)(48). The Berlitz translation of the judgment issued at the applicant’s hearing in Italy indicates that the judge was finding the applicant guilty of an offense even if a formal adjudication of guilt was withheld:

This judge deems it appropriate to accept this request, as all the legal requirements have been fulfilled. And the sentence requested by the parties appears to be *commensurate with the seriousness of the crime* and the personality of the defendant. The defendant can be granted the generic extenuating circumstances in consideration of *this being his first offense* and his behavior in the proceeding. He can also be granted the reduced sentence established by the last paragraph of art. 609 bis Penal Code, as this case falls within the purview of lesser seriousness for which the aforesaid reduced sentence is allowed; finally there exist the requirements for granting the benefit of the conditional suspension of the sentence insofar as this is the *first offense* of the defendant, and there are no elements that suggest that the defendant may *repeat the same criminal behavior.* *Berlitz Translation, CSR82898 (emphasis added).*

The ruling by the Italian judge is not precisely analogous to a ruling that might be issued by a judge in the United States but, in providing a definition of “conviction,” the Immigration and Nationalities Act allows for differences between foreign and domestic law. The language used in the decision by the judge, particularly in his references to the “crime” and “offense” committed by the applicant and to the “criminal behavior” the applicant engaged in, indicates that the judge’s decision was based upon a determination by him that the applicant committed a crime. The ruling above also leaves no question that the applicant received a sentence, whether it was suspended is irrelevant to the conclusion. *Section* 101(a)(48)(B) of the Act, 8 U.S.C. § 1101(a)(48)(B). The record shows the applicant was convicted (as defined by the Act) of child molestation, a CIMT. He is therefore inadmissible to the United States.

The second issue raised by counsel is his contention that the AAO “did not properly and fully consider evidence submitted by the applicant that his removal from the United States would result in “extreme hardship” to his U.S. citizen spouse. In support of that argument counsel refers to a psychosocial evaluation of the applicant and his wife by social worker [REDACTED] that was submitted by counsel in support of the application for waiver. In the previous decision, the AAO indicated that there was no evidence that the social worker had an ongoing relationship with the applicant or his spouse and that she spent only eight hours combined, with the two of them. *AAO decision at 6*. While these factors have an impact upon the weight given to the evidence provided in the social worker’s report, the AAO must take that report into account in evaluating whether the applicant suffered extreme hardship. However, regardless of the weight assigned to the social worker’s report, that report does not establish that the applicant’s spouse would suffer extreme hardship if the applicant were removed.

The issue is not whether the applicant’s removal would result in hardship to his spouse but whether any hardship endured would be extreme. The BIA held in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. The evaluation by the social worker correctly addresses the hardship issues that would arise if she were to remain in the United States, separated from her spouse, or if she were to join him in England. The report goes into much detail about the professional, social and family life of applicant’s spouse in the United States and the adverse emotional impact that would result if that life were disrupted. However, nothing in that report or in any of the other evidence submitted demonstrates that the hardship to the applicant’s wife resulting from the applicant’s removal to England would rise above the emotional hardship endured by typical family members of individuals removed from the United States.

The applicant and his wife have family, professional and social lives in the United States that would be disrupted by removal. Disruption of that life would no doubt cause emotional harm. However, the applicant’s wife has lived abroad for several years. She is well educated. She would not need to learn a language if she relocated in the United Kingdom. As a United States citizen she would be free to travel to the United States and her family and friends when she chose. The applicant has ties to the United Kingdom that would ease the transition. The situation of the applicant’s wife is in some ways less difficult than that faced of the typical family member of an alien who is removed, in that her husband would be removed to a country that is closely tied to the United States, where there are relatively easy and frequent travel options to the United States, where there are language, legal and cultural similarities to the United States. She is faced with a difficult decision of living apart from her husband or giving up a



professional, social and family life that the record indicates she thrives on in the United States. However, the record does not demonstrate that the applicant's removal from the United States would result in extreme hardship to her.

ORDER: The motion is granted and the previous decisions of the District Director and the AAO are affirmed.