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

Board of Immigration Appeals
Office of the Clerk

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130 Delaware Ave., Room 203
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Name: [redacted] [redacted]

Date of this notice: 7/18/2007

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:
GRANT, EDWARD R.
HURWITZ, GERALD S.
MILLER, NEIL P.

Falls Church, Virginia 22041

JUL 18 2007

File: [redacted] - Buffalo, NY Date:

In re: [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Robert D. Kolken, Esquire

ON BEHALF OF DHS: Denise C. Hochul
Assistant Chief Counsel

CHARGE: [redacted]

Notice: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] - Crime involving moral turpitude

APPLICATION: Advance permission to enter the United States as a nonimmigrant under section 212(d)(3)(A)(ii)

The respondent appeals from the decision of the Immigration Judge dated March 16, 2006, in which the Immigration Judge denied the respondent's request for advance permission to enter the United States as a nonimmigrant pursuant to section 212(d)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(3). The appeal will be sustained.

An application under section 212(d)(3)(A)(ii)[1] requires a weighing of at least three factors: (1) the risk of harm to society if the respondent is admitted; (2) the seriousness of the respondent's immigration law violation or criminal law violation, if any; and (3) the nature of the respondent's reasons for wishing to enter the United States. *See Matter of Hranka*, 16 I&N Dec. 491 (BIA 1978). There is no requirement that the respondent's reasons for wanting to enter the United States be "compelling." *See Matter of Hranka*, *supra*, at 492.

The record establishes that the respondent is a Canadian citizen and that he has been married to his Canadian citizen wife since 1981 (Tr. at 19, 69-70; Exh. 1). They have three children (Tr. at 20). At the time of the hearing, the oldest child was about to enter school in the United States (Tr. at 20). The respondent has one criminal conviction, for sexual assault, stemming from an incident that took place in December 1997 in Canada (Tr. at 23- 24; Exh. 4). The respondent gave a ride to a female co-worker and mistakenly formed a belief that she was romantically interested in him (Tr. at 37, 39-40; Exh. 4). The respondent made an uninvited advance on the woman (Exh. 4). The record establishes that the respondent fondled the woman, asked her perform oral sex on him, and

[1] Former section 212(d)(3)(B) of the Act was redesignated as section 212(d)(3)(A)(ii) by sec. 104, Title I, REAL ID Act of 2005.

after she repeatedly stated that she was not interested in the respondent's advances, the respondent left the vehicle and masturbated (Exh. 4). The respondent pled guilty to sexual assault in violation of section 271 of the Canadian Criminal Code (Exh. 2, Tab D). He was sentenced to 1 year of probation and a $6,000 fine (*Id.*). He paid $25,000 to the victim in an out of court settlement of a civil lawsuit (Tr. at 28-29). The respondent was fired from his job, where he had been employed for approximately 16 years (Tr. at 29; Exh. 4). His wife, who worked at the same company, was also let go from her position (Tr. at 29, 72).

The respondent submitted evidence that the incident that led to his conviction was out of character, that he had otherwise been a responsible and valuable member of the community, and that he was assessed in 2000 and again in 2004 as "low risk" and not in need of any treatment or other intervention services (Exh. 2, Tab D; Exh. 3, Tab B). The respondent's evidence included statements issued in 2000 and 2004 from the Alberta Mental Health Board (Exh. 2, Tab D; Exh. 3, Tab B), letters from a judge on the Court of Canadian Citizenship, from former Crown Counsel in Edmonton, from representatives of an Edmonton junior high school, and from the president of Economic Development Edmonton (Exh. 2, Tab D; Exh. 3, Tab B). The respondent's wife testified that the incident in 1997 was a shock to her because it was an aberration, and that the respondent was a good husband and a wonderful father (Tr. at 74, 78). At the time of the respondent's hearing, it had been 9 years since his only offense. There was no evidence presented to indicate that the respondent had a high or even moderate risk of committing another offense. We find that the record establishes a low risk of harm to society if the respondent is admitted.

We next address the seriousness of the respondent's offense. While not discounting the fact that a sexual assault is serious, we observe that the Canadian sentencing recommendation report in the record refers to the respondent's crime as "low end" in the scope of sexual assaults (Exh. 2, Tab D). The victim in this case did not sustain physical injury (Exh. 4). The respondent was not sentenced to any time in jail.

Turning to the respondent's reasons for wishing to enter the United States, we note that the reasons need not be compelling for the respondent's application to be granted. *See Matter of Hranka*, *supra*, at 492. However, the respondent's own reasons are more substantial than those presented in *Matter of Hranka*, *supra*, at 492 (applicant stated that she had missed a cousin's wedding and also that she lived in a town near the border and was ashamed every time a date suggested going to Detroit for a ball game, dinner, or a show). The respondent explained that his daughter was going to school in Boston, he wished to help her move, and he wanted to visit her when she was in school (Tr. at 20-21, 61). He said that his daughter and his other children were unaware of his conviction and that he was embarrassed to tell them about it (Tr. at 21, 62). The respondent said he had missed social events such as a close friend's 25th anniversary celebration (Tr. at 62). The respondent also stated that he had missed employment and business opportunities in the past and that he feared losing more opportunities if he remains unable to travel to the United States (Tr. at 20-21, 61-62). Additionally, the respondent's wife is afraid of flying and feels uncomfortable traveling alone (Tr. at 61-62, 76). She testified that she has family in the United States, that she would like to visit them, and that she also wants to visit her daughter in Boston (Tr. at 74-76).

Given the minimal risk to society which the admission of the respondent as a nonimmigrant would incur, the considerable passage of time since the respondent's only criminal offense, and the legitimate purposes of the respondent in wanting to enter the United States, we find that advance

permission to enter the United States as a nonimmigrant should be granted. *See Matter of Hranka*, *supra*.

ORDER: The appeal is sustained.

FURTHER ORDER: The Immigration Judge's decision is vacated.

FURTHER ORDER: The respondent's application for advance permission to enter as a nonimmigrant is granted under such conditions as the District Director deems appropriate.

FOR THE BOARD