





~~holding~~  
Depending upon the seriousness of the applicant's adverse factors, moreover, these equities may need to be unusual or even outstanding. *Id.*

The respondent's 1996 aggravated felony conviction is unquestionably a very serious adverse discretionary factor. The conviction resulted from the respondent's guilty plea to a charge that he subjected his 11-year-old step-daughter to sexual contact involving digital penetration of her vagina. Under the circumstances, we conclude that the respondent's application for adjustment of status cannot be granted absent proof of genuine rehabilitation and unusual or outstanding countervailing equities. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996) (holding that alien convicted of sexually penetrating a victim under 16 years of age must show compelling equities in order to be granted discretionary relief).

As the Immigration Judge acknowledged, the respondent's equities are very substantial. The respondent is 50 years old, has been a lawful permanent resident of the United States since 1990, and has been gainfully employed as a vineyard worker for 20 years, so removal to Mexico at this stage of his life would cause him serious hardship.

The respondent is also the father or stepfather of a number of United States citizens, most of whom submitted letters of support on his behalf noting that he has provided them with reliable economic support and has been present for many of the important events in their lives (Exh. 4, at 12-13, 15-16). The respondent's ex-wife (and the mother of the child he molested) also filed a letter of support on his behalf, stating that the respondent has been a good provider for his children and that his removal would cause economic hardship to her and to the children by interrupting the flow of child support payments (Exh. 4, at 19). We have no doubt that the respondent's removal to Mexico would cause emotional hardship for all concerned and the loss of his economic support would undoubtedly present real challenges for the family members he leaves behind.

The respondent has also come forward with strong evidence that he has been rehabilitated since his 1996 conviction. The respondent has had no further arrests or convictions since the 1996 incident, and the Immigration Judge found that he takes responsibility for his actions, is sincerely remorseful, and has successfully participated in all aspects of his court-mandated sex offender treatment. The respondent's claim to rehabilitation is also supported by an August 2011 clinical report, prepared by Dr. Richard King (who also testified as an expert witness below), indicating that the respondent presents a very low risk of recidivism (Exh. 6, tab A, pp. 32-48).

Although the respondent's 1996 conviction is a very substantial negative discretionary factor, when viewed cumulatively we conclude that the respondent's lengthy residence in this country, his strong employment history, his family ties to United States citizens, and his genuine rehabilitation are "unusual" and "outstanding" equities. Given the respondent's rehabilitation and the fact that approximately 18 years have elapsed since his last transgression, moreover, we are convinced that his equities outweigh his negative factors and that he deserves this final opportunity to remain with his family. Accordingly, we will vacate the Immigration Judge's decision denying the respondent's application for adjustment of status and remand the record for the completion of background checks and the entry of an appropriate order.

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In conclusion, although the respondent is removable under section 237(a)(2)(E)(i) of the Act, he is eligible for, and deserving of, adjustment of status under section 245(a) of the Act. Accordingly, the following order will be entered.

ORDER: The appeal is sustained and the Immigration Judge's decision is vacated to the extent it denied the respondent's application for adjustment of status.

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

