

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

MARIO CIVITILLO,  
Petitioner,  
V.  
GEORGE SULLIVAN  
IMMIGRATION CUSTOMS AND  
ENFORCEMENT  
DEPARTMENT OF HOMELAND SECURITY,  
Respondents.

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: CASE NO. 3:04CV1576 (RNC)  
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RULING AND ORDER

Petitioner, a citizen of Italy, brings this action for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging a denial of his request for a waiver of deportation under § 212(c) of the Immigration and Naturalization Act, 8 U.S.C. § 1182 (repealed 1996). His request for § 212(c) relief was denied by an immigration judge ("IJ") after a hearing at which petitioner was represented by counsel. The IJ's decision has been affirmed by the Board of Immigration Appeals. Though the petition alleges a deprivation of due process, it raises no constitutional issue of substance. In the absence of such an issue, the Court lacks jurisdiction to review the denial of petitioner's request for § 212(c) relief. Accordingly, the petition is denied.

Petitioner is subject to deportation under 8 U.S.C. § 1227(a)(2)(A)(i)(I) because of convictions for crimes involving sexual abuse of his minor daughter. He is eligible for a waiver of deportation by the Attorney General under § 212(c) because he pleaded guilty before Congress repealed the provision in 1996. See I.N.S. v. St. Cyr, 533 U.S. 289, 326 (2001). Relief from deportation under § 212(c) "is not constitutionally mandated and is discretionary." United States v. Copeland, 376 F.3d 61, 71 (2d Cir. 2004). Habeas jurisdiction over petitions filed pursuant to § 2441 does not extend to review of discretionary refusals to grant waivers of deportation pursuant to § 212(c). Sol v. I.N.S., 274 F.3d 648, 651 (2d Cir. 2001). Thus, to the extent petitioner asks this Court to second-guess the IJ's decision on the merits, the Court lacks jurisdiction to do so.

Petitioner's request for § 212(c) relief was the subject of a day-long hearing before the IJ. In a detailed oral ruling, the transcript of which is 36 pages long (Pet. Ex. A), the IJ balanced the positive equities shown by the evidence against the adverse equities and concluded that petitioner's request for a § 212(c) waiver should be denied. In essence, the IJ decided that petitioner's offense was so serious in nature and

occurred over such a long period of time, that he would have to present evidence of unusual and outstanding equities, which he had not done.

Petitioner attempts to raise a constitutional issue that could be addressed by this Court. He alleges that he was deprived of a constitutional right to due process in that the IJ "attempted to impose his own psychological and psychiatric evaluations of the Petitioner and his family without any basis in fact." (Pet. ¶ 9.) If an IJ were to deny a request for a waiver of deportation under § 212(c) based solely on his own incompetent, unfounded evaluation of a witness's non-obvious psychological condition, such an arbitrary and capricious decision could not be sustained. But that is a far cry from what happened here.

The IJ carefully evaluated the credibility of the testimony of the petitioner and his daughter, which was notably conflicting on the nature and extent of petitioner's sexual misconduct. Petitioner testified that he "made love to" the daughter a limited number of times and denied any sexual abuse of her sister, who did not attend the hearing and whose whereabouts was said to be unknown. The daughter petitioner admittedly abused testified, in effect, that petitioner raped her scores of times over a period of years,

and also raped her sister. The IJ credited the daughter's testimony, as he was entitled to do. This necessarily meant that petitioner, in an attempt to gain equitable relief, was committing perjury on a point of great significance to his application.

The IJ did not profess to be able to conduct a psychological or psychiatric evaluation of the witnesses on his own so that expert testimony was unnecessary. On the contrary, in the course of his analysis of the evidence, the IJ pointedly noted the lack of expert evidence in support of petitioner's request for a waiver and stated that such evidence would have been helpful. The IJ explained that in the absence of such evidence he was not persuaded that petitioner had sustained his burden of proof. In particular, he was not persuaded that petitioner had been rehabilitated, that his daughter had recovered, that his wife was not in denial with regard to the nature and extent of his abuse of their daughters, or that the family was other than dysfunctional. A reasonable trier of fact could make the same or similar findings. Petitioner's attempt to raise a due process issue is therefore unavailing.

Accordingly, the Court lacks jurisdiction to review the IJ's decision and the petition must be denied. The Clerk may

close the file.

So ordered.

Dated at Hartford, Connecticut this 13th day of October  
2004.

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Robert N. Chatigny  
United States District Judge