



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: HUERTA [REDACTED], E [REDACTED]

A74-352-894

Date of this notice: 05/16/2005

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

Sincerely,

Frank Krider
Chief Clerk

Enclosure

Panel Members:
MOSCATO, ANTHONY C.

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A74-352-894 - Los Angeles

Date:

In re: HUERTA [REDACTED], E [REDACTED]

MAY 16 2005

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Banuelos, Jesse J., Esquire

ORDER:

PER CURIAM. The respondent has appealed from the Immigration Judge's decision dated February 05, 2004. The record reveals that the Immigration Judge failed to advise the respondent of his right to apply for a waiver under section 213 of the Immigration and Nationality Act, available in cases involving section 212(a)(4)(B) of the Act (public charge). See *Matter of Ulloa*, 22 I&N Dec. 725 (BIA 1999). More importantly, it appears that the Immigration Judge improperly deemed the fact that the respondent's United States citizen children and lawful permanent resident wife were receiving Medi-Cal benefits and that the family is receiving Food Stamps dispositive in assessing whether the respondent is likely to become a public charge. The Immigration Judge noted that the respondent's sister and sister-in-law were present and prepared to sign affidavits of support.

Guidance issued by the Immigration and Naturalization Service, now known as the Department of Homeland Security (DHS), indicates that a healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his aid in case of an emergency. The DHS defines "public charge" for purposes of adjustment of status as an alien who is likely to become primarily dependent on the government for subsistence. The best evidence of whether an alien is primarily dependent or likely to become primarily dependent on the government for subsistence is demonstrated by either the receipt of public cash assistance or institutionalization for long-term care at government expense. Similarly, the receipt of benefits by family members is not generally attributable to the applicant for purposes of determining that the alien will become a public charge in the absence of a showing that the family is reliant on the family member's benefits as its sole means of support. In addition, among those benefits which may not be considered for public charge purposes are Food Stamps, Medicaid, and the Children's Health Insurance Program (CHIP), as well as state and local programs that are similar to the federal programs (Medi-Cal and Healthy Families). See Guidance at 64 FR 28689.

Under the circumstances, the case is remanded for the Immigration Judge to consider the appropriate guidance for determining if the respondent is a public charge and to advise the respondent that a waiver under section 213 of the Act is available in cases where section

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212(a)(4)(B) of the Act is involved and to issue a new decision. Accordingly, the record is remanded to the Immigration Court for further proceedings.

Anthony C. Myscoto

FOR THE BOARD