

Seattle University School of Law
Administrative Law Problem
Spring 2008

UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES,
Petitioner,

v.

BLAIR COLLINS,
Respondent.

Blair Collins was detained at Seattle-Tacoma International Airport on January 8, 2005, on his/her return from a three-week holiday in the Republic of Ireland. Immigration officials ran a background check and unearthed a conviction for possession of cocaine. United States Citizenship & Immigration Services placed Blair in detention and began removal proceedings. Blair is now before a panel of Immigration Judges to prevent deportation by seeking relief under former Immigration & Naturalization Act §212 (c).

Petitioner—USCIS witnesses:

- Terri Gonzales
- Sean McCarthy

Respondent—Blair Collins' witnesses:

- Blair Collins
- Morgan Margulis

The following rules are controlling:

Domicile is considered unrelinquished if a legal permanent resident has not established a residence outside of the United States with the intent to remain there.

Illicit trafficking in controlled substance includes possession of a controlled substance with or without the intent to deliver.

If an applicant entered a guilty plea prior to April 24, 1996, an applicant may be eligible for relief under former Immigration & Naturalization Act §212 (c). The applicant must establish the following:

1. the applicant was a lawful permanent resident of the United States at the time of entry of plea;
 2. the applicant had seven years of unrelinquished domicile in the United States at the time of entry of plea;
 3. the applicant has not served more than five years in custody due to an aggravated felony conviction; and
 4. the applicant merits a favorable discretionary grant by the immigration judge or panel at the time of the hearing.
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§101 (43) The term “aggravated felony” means-

- (A) murder, rape, or sexual abuse of a minor;
- (B) illicit trafficking in controlled substance, including a drug trafficking crime;
- (C) a crime of violence for which the term of imprisonment at least 1 year;

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.

16 I. & N. Dec. 581, Interim Decision (BIA) 2666
United States Department of Justice--Board of Immigration Appeals
MATTER OF MARIN
In Deportation Proceedings
A-13923847
Decided by Board August 4, 1978

[. . .] The immigration judge must balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented in his behalf to determine whether the granting of section 212(c) relief appears in the best interests of this country.

In order to provide the framework for an equitable application of discretionary relief, the Board has enunciated factors relevant to the issue of whether section 212(c) relief should be granted as a matter of discretion. Among the factors deemed adverse to a respondent's application have been the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent's bad character or undesirability as a permanent resident of this country. [. . .] Although in an individual case, one or more of these adverse factors may ultimately be determinative of whether section 212(c) relief is in fact granted, their presence does not preclude a respondent from presenting evidence in support of a favorable exercise of discretion. [. . .] Favorable considerations have been found to include such factors as family ties within the United States, residence of long duration in this country (particularly when the inception of residence occurred while the respondent was of young age), evidence of hardship to the respondent and family if deportation occurs, service in this country's Armed Forces, a history of employment, the existence of property or business ties, evidence of value and service to the community, proof of a genuine rehabilitation if a criminal record exists, and other evidence attesting to a respondent's good character (e.g., affidavits from family, friends, and responsible community representatives). [. . .] Upon review of the record as a whole, the immigration judge is required to balance the positive and adverse matters to determine whether discretion should be favorably exercised. The basis for the immigration judge's decision must be enunciated in his opinion. In some cases, the minimum equities inherent in eligibility for section 212(c) relief (i.e., residence of at least seven years and status as a lawful permanent resident) may be sufficient in and of themselves to warrant favorable discretionary action. No general standard has been adopted that applications for such relief should ordinarily be granted in the absence of unfavorable factors, however, as an application for section 212(c) relief of necessity carries with it at least one adverse consideration (the ground of exclusion sought waived). [. . .]

The equities that an applicant for section 212(c) relief must bring forward to establish that favorable discretionary action is warranted will depend in each case on the nature and circumstances of the ground of exclusion sought waived and on the presence of any additional adverse matters. As the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence, which in some cases may have to involve unusual or outstanding equities. Such a showing at times may be required solely by virtue of the circumstances and nature of the exclusion ground sought waived.

Affidavit of Blair Collins

My name is Blair Collins. I was born on August 6, 1970, in Blackrock, County Dublin, in Ireland. I live at 501 Felone Lane in Bellevue, Washington. I am a legal permanent resident of the United States and a citizen of the Republic of Ireland.

On January 3, 1983, I flew from Dublin Airport to Seattle-Tacoma-International Airport. I remember flying over with my mother and father and stopping in Shannon Airport. They asked us all questions and looked through my father's bag. We made it through all of the customs and immigration people and were admitted into the United States.

When we first arrived, I liked the States, but I missed home. High school was pretty easy compared to classes back home, and I probably did not study as much as I could have. My parents told me that I was hanging out with the wrong type of people all the time, but who was I meant to be friends with? Maybe I should have listened to them. Perhaps I would still be close to them if I had. After high school, I went to the University of Washington for a term or two, but things really didn't work out well for me there. I started working at a loading dock. That lasted for about six months.

I had five or six different jobs over the next few years. I worked in a bookstore for about nine months. That was the longest I had ever held a job until that point. Nothing really seemed to suit my lifestyle. I just wanted to have fun and spend time with my friends. After all of the problems I had with my parents in high school, we didn't spend much time together. My parents spent about half of the year in Ireland, and I never really went back home to visit. It doesn't really seem like home to me any longer. I'm glad that I've been a permanent resident ever since I came over here. I actually see my cousins more than my parents. My cousin Siobhan lives in New York City, and we exchange Christmas cards almost every year. Siobhan's younger brother

Ronan spends part of every year in Vancouver, British Columbia, and the other part of the year in Phoenix, Arizona. I usually see him a couple of times every year. Siobhan and Ronan are legal permanent residents like me.

The trouble really started in the spring of 1992. On June 10, 1992, I pled guilty to possession of cocaine. I feel badly for what happened, but I think that it was a big misunderstanding. My lawyer told me to just enter a guilty plea and forget about it. But, I didn't really forget about much while I spent that time in prison.

After prison, I felt like a different person, but I don't really like to talk about those days any more. I met my partner, Morgan Margulis, in late 1996. We met in Boston, Massachusetts, while I was there visiting my Aunt Mary.

Now we live in Bellevue with our two children. They are eight and three years old. Morgan is an accountant and works in the city center. Before I was detained, I still had not found a job that suited my skill set. So, I was looking after the children for part of the week. They spent the rest of the week in day care and school while I looked for work. This was the arrangement because Finn, our eight-year-old, is autistic. We need help looking after him.

As I am in detention now and separated from my family, I have had some time to think. I really feel like I started over after I met Morgan, and I am sorry for any harm I committed in the past. I just want a second chance to start my life over again in the United States, and I do not think that going back to Ireland would allow me to do so.

I do solemnly swear that the foregoing is true and correct.

_____ dated this _____ day of _____, 2005.
Blair Collins

Affidavit of Morgan Margulis

My name is Morgan Margulis. I was born on April 20, 1968, in Boston, Massachusetts. I live at 501 Felone Lane in Bellevue, Washington. I am a citizen of the United States.

My partner, Blair, and I met years ago in Boston, Massachusetts. When we first met, we talked about the tough time that Blair had in high school with his/her parents. It seems that Blair's parents had their own business and paid little attention to Blair. They did, however, criticize Blair heavily for his/her poor soccer abilities and for his/her choice in friends. I have not met Blair's parents, but all of his/her problems seemed to stem from his/her relationship with them. Blair really got him/herself into trouble after high school. Maybe Blair was in the wrong place at the wrong time, but I am not really sure why he/she would ever put him/herself into that type of situation.

I moved out to Seattle shortly after we met. It was quite an adjustment, especially because I grew up in Boston and went to college there. However, we managed to settle into a great life pretty quickly. We now live with our two wonderful children.

I am an accountant and work in downtown Seattle. While I usually work forty hours a week, I do work some overtime during busy periods. Blair looks after the children during part of the week. Finn goes to school for part of each day and then he's in day care during some days. Because he is autistic, Blair and I seek outside help to assist us in meeting Finn's needs. Without this help, and certainly without Blair at home, I would not be able to meet Finn's needs alone.

Emma, our daughter, spends part of the week in day care. She will attend pre-school next year. Both of our children are still young and benefit greatly from having one parent at home. Depriving them of this type of care would be detrimental to their well-being.

Unfortunately, my mother recently became ill and came out to Seattle to live closer to her grandchildren. She took a turn for the worse and may have to move in with us. If this is the case, our financial situation will demand that Blair gets a job. Anticipating this change, Blair is looking for work right now, but he/she does not seem to be having much success. Blair has been out of the job market for about ten years now. We are uncertain as to how to best handle care for the children when Blair does find a job. My mother cannot care for the children on her own because of her illness. We may even have to provide care for her. In the unfortunate event that Blair is deported, moving our family to Ireland would be extremely difficult due to my mother's delicate condition and the needs of both children.

If Blair is deported, this will tear our family structure apart. Not only will I suffer the great emotional loss of my partner, but our children will lose a parent. At such a young age, this loss would be devastating. If Blair is forced to return to Ireland, our family will not recover from the loss.

I do solemnly swear that the foregoing is true and correct.

_____ dated this _____ day of _____, 2005.
Morgan Margulis

Affidavit of Terri Gonzales

My name is Terri Gonzales. I serve as a Parole Officer for King County and have done so for the past fifteen years. I usually have quite a heavy caseload, so I do not remember all of the cases that I monitor. However, there have been a few cases that make an impression on me. These are the bad ones. These are the cases that I remember, even if I try to forget.

Blair Collins. I do remember working with Blair. He/she was on parole for a while after serving 13 months in prison. When I first met Blair he/she was pretty depressed because he/she had just spent time in prison. Prison really changes people, more than parole ever could. Blair could not seem to open up and talk to me for the first three or four months. But, after that, Blair seemed to want to talk. Unlike many other parolees, Blair did not seem sorry for what he/she had done. Blair just wanted to talk about how angry he/she was at everyone else. He/she seemed to despise his/her immigration lawyer, his/her sentencing judge, and his/her parents. Blair talked about his/her hatred for these people, but never talked about his/her own actions or any responsibility for them.

It is usually not my place to talk about these issues; in fact, we have several rules against getting too close to the parolees. But, sometimes I forget that I have a professional responsibility to these parolees. After all, they are human, just like the rest of us. Blair and I had a number of conversations and interactions over the entire period of his/her parole. Sometimes Blair would just check in, but Blair would also get really angry. He/she had psychotic fits of aggression. Once, he/she even picked up and threw a chair across my office. Papers flew everywhere and Blair had to be restrained.

Blair was transferred to another parole officer for a period of three months, just until he/she calmed down. After that, I requested that Blair be transferred back to my case load. It

just seemed like a good idea under the circumstances, especially because I was very familiar with Blair's issues. I also felt like we had an understanding.

After Blair got out of prison, all he/she wanted to do was get even with everyone who had hurt him/her. But, Blair could not seem to see that he/she had hurt other people pretty significantly. At the end of his/her parole, Blair was still yelling and screaming at almost every meeting about how everyone had wronged him/her. Blair seemed to get more worked up the longer he/she was on parole. Usually, most parolees calm down after awhile, but not Blair.

Even after Blair's probation period ended, Blair seemed unable to function on his/her own. Blair could not hold down a steady job. However, Blair had a lot of help from his/her cousin in Vancouver, B.C. and some aunt in Boston. They really helped Blair find a new place to live and gave Blair money. Blair met Morgan awhile after that. After Blair met Morgan, I didn't really keep in contact with Blair.

I do solemnly swear that the foregoing is true and correct.

_____ dated this _____ day of _____, 2005.
Terri Gonzales

Affidavit of Sean McCarthy

My name is Sean McCarthy. I was born in Ballyfermot, Dublin 10, in Ireland. I am an Irish citizen and a legal permanent resident of the United States. I now live in Kirkland, Washington, with my family.

As a good friend of Blair Collins' parents, I have known Blair since he/she was an infant. Blair used to spend time with my children when we all lived in Ireland. We all moved over to the States around the same time, but my children never really spent much time with Blair after his/her junior year in high school over here.

Blair was a delightful child who always seemed to have a brilliant time entertaining him/herself. He/she was not a burden on his/her parents until about the second year of high school. At that time, Blair seemed to lose his/her ability to focus in school. The friends that Blair made could only be classified as hooligans, and they hardly provided the type of social support that Blair needed to stay out of trouble. In fact, I think that they were the cause of Blair's later trouble with the law. Those kids seemed to bring out Blair's aggressive streak. Blair seemed to thrive on a certain level of aggression, especially towards anyone in a position of authority.

By the time Blair entered his/her junior year in high school, I did not want my children to spend any time with Blair. I can honestly say that Blair's aggressive nature strained the relationship between my family and the Collins family. It was a quite a pity as we were all far from home and enjoyed the comfort that such close friends provided. But, Blair ruined all of that. I guess that my memories of Blair are not so fond.

Furthermore, Blair has only been back to Ireland a couple of times since he/she moved to the United States as a teenager. Blair seemed pretty reluctant to ever leave the Northwest once

he/she settled here, but Blair used to travel around the United States on occasion. I don't talk to Blair any longer. I rarely hear updates on Blair because his/her parents are so reluctant to even talk about Blair. I don't even know if they are still in contact.

I do solemnly swear that the foregoing is true and correct.

_____ dated this _____ day of _____, 2005.