U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name [redacted] [redacted]

Date of this notice: 12/17/2010

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:
Adkins-Blanch, Charles K.

File: [redacted] - Las Vegas, NV Date: DEC 17 2010

In re: [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Anish Vashistha, Esquire

ON BEHALF OF DHS: [redacted]
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under section 212(a)(6)(C)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] -
Fraud or willful misrepresentation of a material fact

APPLICATION: Special rule cancellation of removal

The Department of Homeland Security ("DHS") appeals the Immigration Judge's December 28, 2009, decision granting the respondent's application for special rule cancellation of removal under section 240A(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(2). The respondent has filed a brief in opposition to the DHS's appeal. The appeal will be dismissed, and the record will be remanded for the required background and security checks.

We review findings of fact, including the determination of credibility, under a clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). There is clear error in a factual finding when the reviewing authority is left with the definite and firm conviction that a mistake has been made. *See Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003). We review questions of law, including whether the parties have met the relevant burden of proof, and issues of discretion under a *de novo* standard. 8 C.F.R. § 1003.1(d)(3)(ii). The respondent's application was filed after May 11, 2005, and therefore is governed by the provisions of the REAL ID Act. *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

The Immigration Judge's positive credibility determination is not clearly erroneous. The respondent provided plausible and detailed answers to the questions presented to him. He presented a reasonable explanation for his signed statement admitting to entering into a sham marriage (I.J. at 3-4). The Immigration Judge correctly relied on these factors to find the respondent credible. *See Shrestha v. Holder*, 590 F.3d 1034 (9th Cir. 2010) (credibility finding must be

[redacted]

supported by specific and cogent reasons that refer to specific aspects of the record). As such, we accept the respondent's testimony as true.

The Immigration Judge expressly credited the respondent's testimony that his marriage to [redacted] was valid (I.J. at 4). That testimony establishes that the respondent's first marriage was *bona fide*. *See Matter of Soriano*, 19 I&N Dec. 764, 765 (BIA 1998) (holding that a marriage is valid if the parties intended to establish a life together). We acknowledge the DHS's argument that the Immigration Judge erred by stating that the respondent's ex-wife "should have been brought to court to be cross-examined" in light of the confidentiality requirements of 8 U.S.C. § 1367 (I.J. at 4). However, this alleged error does not affect the ultimate outcome in this case, as the Immigration Judge cited other factors for crediting the respondent's testimony over the ex-wife's statement (I.J. at 4). As the DHS has not established that the respondent entered into a marriage for the sole purpose of circumventing the immigration laws of the United States, the Immigration Judge did not err by declining to sustain the charge of removability under section 237(a)(1)(A) of the Act, 8 U.S.C. § 1227(a)(1)(A) (Tr. at 109).

We agree with the Immigration Judge that the respondent would suffer extreme hardship if he is removed to Tunisia.[1] The respondent testified that it would be difficult to obtain employment and re-integrate into the Tunisian social system (Tr. at 60). According to a psychological evaluation, the respondent suffers from post-traumatic stress disorder, experiencing flashbacks, constant anxiety, and psychological numbing as a result of his abusive relationship with his ex-wife (Exh. 6 at 78). The respondent may have difficulty finding psychological counseling in Tunisia (Tr. at 90). Likewise, he testified that he would be ashamed to face his family as a result of the social stigma that accompanies a failed marriage (Tr. at 60). The respondent also suffers from "very advanced glaucoma" for which he is being treated and monitored (Exh. 6 at Tab F). In light of these factors, the record sufficiently establishes that the respondent would face extreme hardship if he is removed.

Finally, the respondent merits a favorable exercise of discretion. While the respondent has escaped his abusive wife and remarried, which is a factor that can weigh against a grant of relief, this single factor is not dispositive. *See Matter of A-M-*, 25 I&N Dec. 66, 77-78 (BIA 2009) (denying special rule cancellation of removal to an alien who had obtained a form of VAWA relief once, had become removable as a result of alien smuggling, and had not argued that she needed or was eligible for VAWA protection in her current relationship). The record shows that the respondent is still suffering from the effects of his abusive relationship.

The respondent has resided in the United States for more than a decade and is married to a citizen of the United States. The respondent has also demonstrated acculturation in the United States by learning English and pursuing a graduate degree. The financial, emotional, and medical hardships that would result from the respondent's removal are strong humanitarian factors. Additionally, the respondent is in need of stability and an opportunity to recover from his abusive relationship (Exh. 6 at 79).

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[1] The DHS does not contest the Immigration Judge's determinations concerning the other statutory requirements for special rule cancellation of removal.

[redacted]

Aside from the respondent's purchase of a fraudulent social security number, the record is devoid of any remarkable adverse factors. The respondent reasonably explained that he did not pursue charges against his ex-wife because he did not want to cause any problems for her children (Tr. at 64).

In light of the above mentioned factors and the absence of any criminal record, we agree with the Immigration Judge's discretionary determination in this matter. Accordingly, we will dismiss the appeal. Because the record does not reveal that the required background and security checks are current, we are required to remand the record to ensure that they are current. *See* 8 C.F.R. § 1003.1(d)(6).

ORDER: The appeal is dismissed.

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