U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: MENENDEZ, SOCORRO

A 078-111-837

Date of this notice: 7/8/2015

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:
Grant, Edward R.

Userteam: Docket

File: A078 111 837 – Los Angeles, CA Date: JUL - 8 2015

In re: SOCORRO MENENDEZ a.k.a. Socorro Hilda Loya-Rivera

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: R. Wayne McMillan, Esquire

APPLICATION: Administrative closure; adjustment of status

The respondent, a native and citizen of Mexico and an arriving alien, appeals from the Immigration Judge's decision dated December 11, 2013, denying her application for adjustment of status pursuant to section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255, and ordering her removal from the United States. These proceedings will be administratively closed.

The Board defers to the factual findings of an Immigration Judge, unless they are clearly erroneous, but it retains independent judgment and discretion, subject to applicable governing standards, regarding questions of law and the application of a particular standard of law to those facts. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

In her appellate brief, the respondent requests administrative closure of these proceedings. *See Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012) (setting forth factors to consider in determining whether administrative closure of a proceeding is appropriate even when it is opposed by one of the parties). She states that she is the beneficiary of an approved visa petition (Form I-130) filed by her United States citizen daughter, and her pending application for adjustment of status was administratively closed by the United States Citizenship and Immigration Services (USCIS) because she is in removal proceedings. The USCIS had earlier denied her application on account of her false claim to United States citizenship. The respondent argues that the USCIS, notwithstanding its earlier denial, will likely grant her current application, inasmuch as the Immigration Judge did not sustain the false claim to citizenship charge of removability (I.J. at 2). In light of the foregoing, and the Immigration Judge's lack of jurisdiction over the application, we will administratively close these proceedings pending notice from the parties of the outcome of the respondent's adjustment of status application before the USCIS.

Accordingly, the following order will be entered.

ORDER: Proceedings before the Board in this case are administratively closed.

If either party wishes to reinstate these proceedings, a written request to may be made to the Board. **The Board will take no further action in the case unless a request is received from one of the parties.** The request **must** be submitted directly to the Board of Immigration Appeals Clerk's Office, without fee, but with certification of service on the opposing party. If properly submitted, the Board shall reinstate the proceedings.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
LOS ANGELES, CALIFORNIA

IN THE MATTER OF:	)	
	)	
MENENDEZ, SOCORRO	)	**IN REMOVAL PROCEEDING**
	)	
FILE NO: A078 111 837	)	
	)	

CHARGES: **Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, as amended (immigrant not in possession of valid documents)**

Section 212(a)(6)(C)(i) of the Immigration and Nationality Act, as amended (alien who falsely represents or has falsely represented herself to be a United States citizen for a purpose or benefit under the Act or any other Federal or State law

APPLICATIONS: **Adjustment of status, or motion to terminate**

ON BEHALF OF RESPONDENT	**ON BEHALF OF DHS**
R. Wayne McMillan, Esq.	**Heather Libeu, Esq.**
150 E. Colorado Blvd.	**606 S. Olive St.**
Suite 150	**Suite 800**
Pasadena CA 91105	**Los Angeles CA 90014**

DECISION AND ORDER OF THE IMMIGRATION JUDGE

Respondent is a female who admits that she is a native and citizen of Mexico. She was placed in removal proceedings with the November 3, 2010 filing of a Notice to Appear (NTA) with the Los Angeles Immigration Court. The NTA, which is dated October 29, 2010, was marked and admitted as Exhibit 1.

During a February 13, 2011 master calendar hearing, Respondent, through counsel, admitted allegations one through three as set out in the NTA, but denied allegation 4 and denied the sole ground of removability. The matter was reset for a contested NTA proceeding.

On August 30, 2011, the Department of Homeland Security (DHS) filed an I-261, lodged charge, with the Immigration Court. The lodged charge included a complete substitution of the factual allegations set out in the NTA. The lodged charge also charged Respondent as an

arriving alien, and substituted two ground of inadmissibility in lieu of the single ground of removability set out in the NTA. Pleading were taken and the Respondent admitted the factual allegations relating to her country of citizenship and nativity and that she was paroled into the United States on or about July 18, 2000 as a humanitarian parole. The parties agreed to a pen and ink amendment to the lodged charge to state that Respondent's parole status expired on August 17, 2000. With that amendment, Respondent admitted allegation four in the lodged charge. However, she denied allegations five and six and denied both grounds of inadmissibility.

During a November 16, 2012 hearing, the Court sustained the section 212(a)(7)(A)(i)(I) ground of inadmissibility but did not sustain the section 212(a)(6)(C)(i) (false claim to U.S. citizenship) ground of inadmissibility finding that the Respondent timely recanted any assertion of U.S. citizenship. Respondent designated Mexico as the country of removal in the event removal should become necessary. She also advised the Court that she wished to pursue adjustment of status before that Court based on an approved I-130 petition filed by her United States citizen daughter.

Following the November 16, 2012 hearing, the Court held a hearing to discuss issues of eligibility. During the hearing, it was confirmed that the Respondent previously filed an adjustment of status application with the Department of Homeland Security, Citizenship and Immigration Services (CIS). The parties stipulated that this application had been denied by CIS due to a determination that Respondent made a false claim to U.S. citizenship. Respondent then filed a second I-485 which was administratively closed by CIS. Respondent filed a motion to reconsider which, at the time of the Court's final hearing in the matter was still pending before CIS. Respondent also filed a motion to administratively close the removal proceeding but subsequently withdrew that motion. Finally, Respondent filed a motion to terminate to allow CIS to adjudicate Respondent's second I-485 adjustment of status application. DHS filed opposition to the Respondent's motion to terminate arguing that CIS previously determined that Respondent was not eligible for adjustment of status due to a false claim to US citizenship. DHS also argued that the Court lacks jurisdiction to adjudicate Respondent's adjustment of status application because she is an arriving alien and jurisdiction rests solely with CIS.

Because Respondent is an arriving alien, having been paroled into the United States as set out in the lodged charge, CIS has sole jurisdiction over her application for adjustment of status. See, 8 C.F.R. section 245.2(a) and section 1245.2(a)(ii). Respondent did not present any documentary or testimonial evidence to establish that she is within the limited category of arriving aliens whose adjustment of status applications may be renewed before the Immigration Judge in removal proceedings. This being the case, the Court will pretermit and deny Respondent's application for adjustment of status.

Respondent is not eligible for voluntary departure as she is an arriving alien. *See*, §240B(4) of the Act. Finally, Respondent has not submitted any other applications for relief. Thus, the following orders will be entered:

ORDERS

IT IS ORDERED that Respondent's application for adjustment of status is hereby DENIED.

IT IS FURTHER ORDER THAT Respondent be removed to Mexico on the charge set out in the I-261, lodged charge, to wit, section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act as amended as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a) of the Act.

DATE: December 11, 2013

MONICA M. LITTLE
IMMIGRATION JUDGE

APPEAL RIGHTS: The parties have the right to appeal the decision and orders in this case. Any appeal must be filed with the Board of Immigration Appeal within thirty (30) days of the date of this decision and orders. January 10, 2014