U.S. Department of Justice

Executive Office for Immigration Review

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Name: SEGURA ROMERO, ALBERTO **A 072-813-888**

Date of this notice: 9/19/2019

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:
Noferi, Mark

Userteam: Docket

File: A072-813-888 – Chicago, IL

Date: SEP 19 2019

In re: Alberto SEGURA ROMERO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Tia L. Haywood, Esquire

ON BEHALF OF DHS: Geoffrey P. Gilpin
Assistant Chief Counsel

APPLICATION: Adjustment of status

The Department of Homeland Security ("DHS") appeals from the Immigration Judge's April 26, 2019, decision granting the respondent's application for adjustment of status under section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i), sought in conjunction with a waiver of inadmissibility under section 212(h)(1)(B) of the Act, 8 U.S.C. § 1182(h)(1)(B). The respondent, a native and citizen of Mexico, opposes the appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found that, because the DHS conceded extreme hardship, there was no dispute that the respondent was eligible for the section 212(h) waiver (IJ at 1; Tr. at 147-48). The Immigration Judge found the respondent statutorily eligible for adjustment of status under section 245(i) of the Act and granted adjustment of status in the exercise of discretion (IJ at 1-6). On appeal, the DHS challenges the favorable exercise of discretion (DHS's Br. at 14-19).

Upon de novo review, we decline to disturb the Immigration Judge's favorable exercise of discretion in this case (IJ at 5; Respondent's Br. at 6-7). Where an applicant for adjustment of status under section 245 of the Act presents adverse discretionary information, it is necessary for him to offset this negative information with countervailing positive equities, including evidence of family ties in the United States, hardship if the application is not granted, and the length of the applicant's residence in the United States, among other things. *See Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970). In the absence of adverse factors, adjustment will ordinarily be granted, although the grant of adjustment is an exercise of discretion. *See id.*

The negative factors of record include the respondent's five convictions for driving under the influence ("DUI") in 2001, 2005, 2009 (two convictions), and 2016 (IJ at 2; Exhs. 2, 8). The respondent was convicted of two DUIs prior to his stepdaughter's death in 2007 (IJ at 2). After he was placed in removal proceedings, his proceedings were administratively closed in 2010 (IJ at 5; Tr. at 2, 83-84, 128). However, the respondent was convicted again of DUI in violation

of Illinois state law in 2016, for which he was sentenced to 4 years' imprisonment (IJ at 2; Exh. 8). The respondent was also convicted twice for possession of a controlled substance in violation of Illinois state law in 2003 and 2005, both of which were vacated on constitutional grounds in 2018 (Tr. at 62; Exhs. 1A, 6, 8; DHS's Br. at 7). The Immigration Judge acknowledged that, ordinarily, the court would deny adjustment of status with regard to the respondent's criminal history out of concern for the respondent's danger to the community and absent extraordinary positive factors (IJ at 2). However, the Immigration Judge found that extraordinary countervailing positive factors were present in the respondent's case (IJ at 2).

With respect to the respondent's positive equities, the Immigration Judge recognized (1) that the respondent is part of a very close "Gold Star" family; (2) that there is evidence of rehabilitation in the form of 600 hours of therapy and counseling since his last DUI conviction; and (3) that the respondent has a very good treatment plan in place to help him maintain sobriety (IJ at 2-6; Tr. at 88, 100-01, 108, 176-78; Exhs. 3, 6). The respondent has significant family ties in this country, including his United States citizen wife of over 30 years and two adult children (Tr. at 111-13, 143, 183; Respondent's Br. at 9; Exh. 9). The Immigration Judge noted the respondent's sympathetic personal history (IJ at 5). The respondent's first wife died in childbirth many years ago (IJ at 5; Exh. 6). The respondent's stepdaughter, whom the respondent raised as his daughter, enlisted in the United States military and was killed in a tragic accident while serving on active duty overseas (IJ at 3). The respondent's wife testified that she blamed the respondent in many ways for encouraging her daughter to join the military and took out her own pain on the respondent (IJ at 3; Tr. at 143).

While the Immigration Judge emphasized that the respondent is responsible for his own conduct, the Immigration Judge also noted the context of the DUIs in that the respondent committed DUI offenses in large part due to his stepdaughter's death (IJ at 3). The Immigration Judge also noted that the respondent did not commit an alcohol-related incident between 2008 and 2016 (IJ at 3). The Immigration Judge found that the respondent did not receive the treatment that he should have obtained after 2008 and after the DHS administratively closed his case (IJ at 3, 6; Tr. at 162-63). The respondent began to receive alcohol treatment while he was incarcerated for his most recent DUI, and the Immigration Judge found that he has undergone 600 hours of various types of alcohol treatment and counseling, including the Alcoholics Anonymous program (IJ at 4; Tr. at 100-01, 105, 108; Exhs. 3, 6). As the pastor of the respondent's Christian church testified at the respondent's hearing, the church has re-established a twelve-step program for the respondent, involving a subgroup of five people along with two pastors to monitor the respondent (IJ at 4; Tr. at 176-78; Exh. 10). The respondent's wife also supports the respondent as she has been receiving her own psychological care and no longer blames the respondent for the stepdaughter's death (IJ at 5; Tr. at 145-46).

The Immigration Judge considered that the DHS had administratively closed the respondent's proceedings largely due to his family's history and that the DHS had already given him a chance (IJ at 5). Yet, the Immigration Judge also found that the respondent understands the gravity of the situation, the seriousness and danger that his use of alcohol poses to himself and his family, and that he has been willing and able to take responsibility for his offenses (IJ at 5; Tr. at 99-100, 110). While the Immigration Judge recognized that the respondent's convictions are serious, and while it is difficult to establish rehabilitation while in detention, the Immigration Judge found persuasive

evidence that the respondent has made significant changes since his last DUI conviction to rehabilitate (IJ at 6; Tr. at 208). *See Matter of Mendez*, 21 I&N Dec. 296, 304-05 (BIA 1996) (outlining the role of rehabilitation in a discretionary analysis where a criminal record exists); *cf. Matter of Siniauskas*, 27 I&N Dec. 207, 208, 210 (BIA 2018). Moreover, the Immigration Judge found that the respondent is unlikely to commit another drunk driving offense (IJ at 5). We discern no clear error in the Immigration Judge's findings. 8 C.F.R. § 1003.1(d)(3)(i).

This is a close case, but notwithstanding the respondent's negative discretionary factors, the Immigration Judge decided to exercise favor on behalf of the respondent after assessing his equities and finding evidence of rehabilitation. Upon consideration of the totality of the circumstances presented in this case and a balancing of the appropriate factors, we decline to disturb the Immigration Judge's decision to grant the respondent adjustment of status under section 245(i) of the Act as a matter of discretion (IJ at 5-6). In light of our disposition, we will remand the record for updating of the required background and security checks. Accordingly, the following orders will be entered.

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