U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: RIVAS, MARIA IRERI

A 089-573-062

Date of this notice: 6/24/2013

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:
Miller, Neil P.

yungc
Userteam: Docket

File: A089 573 062 – Reno, NV

Date: JUN 24 2013

In re: MARIA IRERI RIVAS

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Lisa Weissman-Ward, Esquire

ON BEHALF OF DHS: Wayne H. Price
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(D)(i), I&N Act [8 U.S.C. § 1227(a)(1)(D)(i)] - Conditional resident status terminated

Sec. 237(a)(3)(D)(i), I&N Act [8 U.S.C. § 1227(a)(3)(D)(i)] - False claim of United States citizenship

Lodged: 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)(ii)(I), I&N Act [8 U.S.C. § 1182(a)(6)(C)(ii)(I)] - False claim of United States citizenship

APPLICATION: Reopening; remand; stay of removal

The respondent moves the Board pursuant to 8 C.F.R. § 1003.2 to reopen her removal proceedings to challenge the removability charges under sections 237(a)(3)(D)(i) and (a)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1227(a)(3)(D)(i) and (a)(1)(A), and to have the Immigration Judge review the U.S. Citizenship and Immigration Services' ("USCIS") denial of her application for a hardship waiver under section 216(c)(4)(B) of the Act, 8 U.S.C. § 1186a(c)(4)(B). In our decision dated January 30, 2013, we dismissed her appeal from the Immigration Judge's decision which denied her motion to suppress and found her removable as charged above. The Department of Homeland Security ("DHS") opposes her motion. The motion will be granted.

The respondent's motion to reopen filed on April 29, 2013, is timely. She alleges ineffective assistance of former counsel (F. Woodside Wright). In *Matter of Compean, Bangaly, & J-E-C-*, 25 I&N Dec. 1 (A.G. 2009), *vacating* 24 I&N Dec. 710 (A.G. 2009), the Attorney General directed the Board to continue to apply the previously established standards for reviewing motions to reopen based on claims of ineffective assistance of counsel (pending the outcome of a rulemaking process).

The respondent meets the requirements in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), to allege ineffective assistance of former counsel. She presents her declaration, counsel's letter to Mr. Wright, and a copy of the complaint filed against Mr. Wright (Motion Exhs. at 55-89).

The respondent shows prejudice. *See Lin v. Ashcroft*, 377 F.3d 1014, 1027 (9th Cir. 2004) (the court does not require that an alien's representation be brilliant, but it cannot serve to make the immigration hearing so fundamentally unfair that the alien was prevented from reasonably presenting his case). She presents extensive evidence to support her contention that she entered into her first marriage in good faith (Motion Exhs. at 145-260). Mr. Wright, by not seeking review by the Immigration Judge of the USCIS's denial of her second Form I-751 (application for a waiver under section 216(c)(4)(B) of the Act), prevented her from reasonably presenting her case. This may have affected the outcome of the case. *See Correa-Rivera v. Holder*, 706 F.3d 1128, 1133 (9th Cir. 2013) (the court will find prejudice when the performance of counsel was so inadequate that it *may* have affected the outcome of the proceedings).

The respondent also shows prejudice regarding the two removability charges she challenges. *See Correa-Rivera v. Holder, supra.* Section 237(a)(3)(D)(i) of the Act provides, in pertinent part, that any alien who has falsely represented himself or herself to be a U.S. citizen *for any purpose or benefit under* this Act (including section 274A) or *any* Federal or *State law* is deportable. Section 212(a)(6)(C)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii)(I), uses the same language except that the alien is "inadmissible" instead of deportable. She presents evidence in support of her contention that stating that she was a U.S. citizen on her application for admission to the University of Nevada, Reno (Exhs. 2, 3), was not for any purpose or benefit under Nevada law (Motion Exhs. at 90-144). Mr. Wright did not present any evidence on this issue (other than in support of the motion to suppress). Her evidence may have affected the outcome of the case. We conclude that she shows prejudice under the standard in *Correa-Rivera v. Holder, supra.*[1]

Reopening and remand to the Immigration Judge are warranted because the respondent meets the requirements in *Matter of Lozada, supra*, and shows prejudice. Since her motion to reopen is timely filed, due diligence is not an issue. Because we will grant her motion, her stay request has been rendered moot.

Accordingly, the following orders will be entered.

ORDER: The motion to reopen is granted, and the proceedings are reopened.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

[1] On remand the respondent and the DHS may submit additional evidence and present legal arguments regarding this issue.