U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: C[redacted]-C[redacted], A[redacted]... **A[redacted]862**

Date of this notice: 2/7/2018

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:
Pauley, Roger
Greer, Anne J.
Crossett, John P.

Userteam: Docket

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File: [redacted] 862 – Memphis, TN

Date: FEB - 7 2018

In re: Alcibiabes CASTRO-CARTAHENA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jimmie C. Bush, Esquire

APPLICATION: Cancellation of removal

In a decision dated April 6, 2017, an Immigration Judge denied the respondent's application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b), but granted him the privilege of voluntary departure. The respondent appeals from the denial of his application for cancellation of removal. The appeal will be sustained.

The Immigration Judge determined that the respondent, a native and citizen of Mexico, established good moral character and exceptional and extremely unusual hardship to a qualifying relative, but that he was ineligible for such relief because he had failed to prove that he had been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date when the Notice to Appear ("NTA") was served on him, as required by sections 240A(b)(1)(A) and (d)(1) of the Act. The respondent challenges this determination on appeal.

The respondent was personally served with the NTA in this matter on June 4, 2012, and therefore to satisfy the 10-year continuous physical presence requirement he must establish that he entered the United States on or before June 4, 2002. The Immigration Judge found that he had failed to do so, and we review that finding for clear error. 8 C.F.R. § 1003.1(d)(3)(i). In order to reverse a factual determination as "clearly erroneous," we must, upon consideration of "the entire evidence," be "left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948). We have formed such a conviction in this case.

The respondent has consistently maintained that he first entered the United States in May of 2001 (IJ at 3; Tr. at 42). The respondent testified that he initially lived with his father-in-law, and he then testified as to where he has lived in the United States and for how long (IJ at 3, 5; Tr. at 18-22, 45-46). In addition, the respondent's 23-year-old son, [redacted], a DACA recipient, testified that he too came to the United States in May of 2001, when he was 7 years old, and that he and his parents began living with his grandparents, and he specified where they have lived in the United States (IJ at 6-7; Tr. at 67-71). In addition, the respondent's employer submitted a letter dated January 5, 2014, stating that he has known the respondent for about 12 years and letters by two others, submitted on January 16, 2014, indicate that they knew the respondent for 12 years (IJ at 10; Exh. 2, Tab B at 2, 3, and 8). Based on the Immigration Judge's findings of fact, we

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determine that the evidence of record is sufficient to meet the respondent's burden of establishing the necessary 10 years continuous physical presence. Insofar as there is nothing in the record indicating that the respondent is ineligible for cancellation of removal as a matter of discretion, we conclude that eligibility for cancellation of removal has been established. In view of the above, the following orders will be entered.

ORDER: The appeal is sustained and the Immigration Judge's decision denying cancellation of removal is reversed.

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).

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