U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: NILSSON, LARS HENRIC ANTON **A 210-233-813**

Date of this notice: 6/29/2018

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:
Creppy, Michael J.
Hunsucker, Keith E.
Liebowitz, Ellen C

Userteam: Docket

File: A210 233 813 – York, PA Date: JUN 29 2018

In re: Lars Henric Anton NILSSON a.k.a. Lars Henric Nilsson

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Daniel M. Rudnick, Esquire

ON BEHALF OF DHS: Alice Song Hartye
Assistant Chief Counsel

APPLICATION: Cancellation of removal under section 240A(a)

The respondent, a native and citizen of Sweden and lawful permanent resident, appeals the Immigration Judge's January 29, 2018, decision denying his application for cancellation of removal for certain permanent residents under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a). The Department of Homeland Security opposes the appeal. The record will be remanded.

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 a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge pretermitted the respondent's application for cancellation of removal because he determined that the respondent could not establish 7 years of continuous residence in the United States after admission in any status. Section 240A(a)(2) of the Act. The respondent does not challenge the Immigration Judge's determination that his possession of oxycodone on March 12, 2016—an offense for which he was later convicted—terminated his period of continuous residence (IJ at 4; Exh. 3, Tab D). *See* section 240A(d)(1) of the Act (stating that any period of continuous residence shall be deemed to end when an alien has committed a crime rendering him or her inadmissible or removable from the United States). He argues, however, that the Immigration Judge erred in calculating his continuous residence from August 13, 2011—the date of his most recent admission into the United States as a nonimmigrant—rather than from August 20, 2008—the date of his first admission into the United States as a nonimmigrant (Exh. 5, Tab A).

The term "residence" refers to a person's "principal, actual dwelling place." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). Any admission into the United States in a lawful status can start the accrual of continuous residence for section 240A(a)(2) of the Act. *See Matter of Castillo Angulo*, 27 I&N Dec. 194, 199-200 (BIA 2018); *Matter of Blancas*, 23 I&N Dec. 458, 459-60 (BIA 2002). As long as the alien continues to live in the United States and his or her continuous residence is not terminated under section 240A(d)(1) of the Act, he or she will accrue continuous residence regardless of whether the alien changes his or her

original status or falls out of status. *Matter of Blancas*, 23 I&N Dec. 460-61. The Immigration Judge's determination that a subsequent admission into the United States restarts the 7-year residency clock is not supported by any statutory provisions or by Board or circuit court precedent.

Section 240A(a)(2) of the Act, which requires that an alien "ha[ve] resided in the United States continuously for 7 years after having been admitted in any status," does not limit the accrual of continuous residence to the alien's last admission into the United States. Although the Act specifies certain circumstances that will terminate continuous residence, it does not identify any circumstances that will necessarily cause a "break" in continuous residence and require the 7-year residency clock to restart. *See* section 240A(d)(1) of the Act (noting that the issuance of a Notice to Appear or the commission of certain crimes will terminate an alien's period of continuous residence); *cf.* section 240A(d)(2) of the Act (stating that a departure from the United States of more than 90 days or an absence of 180 days in the aggregate will constitute a "break" in continuous physical presence).

Based on the foregoing, we consider it necessary to remand the record to the Immigration Judge for further factual findings and analysis on whether the respondent has resided continuously in the United States for 7 years following his 2008 admission as a nonimmigrant (IJ at 1-2; Exh. 5, Tab A). *See Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002) (noting that the Board has limited fact-finding authority). In doing so, the Immigration Judge should consider all the evidence in the record, including the evidence of the respondent's residence in the United States and the respondent's trips abroad. The Immigration Judge should also consider the respondent's argument based on *De Rodriguez v. Holder*, 724 F.3d 1147, 1151-52 (9th Cir. 2013), that brief trips abroad do not constitute a break in continuous residence. If necessary, the Immigration Judge should further consider the respondent's eligibility for cancellation of removal. Section 240A(a) of the Act. Accordingly, the following order will be entered.

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

FOR THE BOARD