U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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3400 Concord Road
York, PA 17402

Name: M[redacted] C[redacted], J[redacted]

A [redacted]-494

Date of this notice: 3/28/2018

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:
Snow, Thomas G
Pauley, Roger
Crossett, John P.

Docket
Userteam: Docket

File: [redacted] 494 – York, PA

Date: MAR 28 2018

In re: J[redacted] M[redacted] C[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rebecca Hufstader, Esquire

ON BEHALF OF DHS: Jeffrey F. Boyles
Assistant Chief Counsel

APPLICATION: Cancellation of removal

The Department of Homeland Security (DHS) appeals from the Immigration Judge's September 28, 2017, decision granting the respondent cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a). The appeal will be dismissed, and the record will be remanded for appropriate background and security investigations.

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

As a threshold matter, due to the circumstances presented here, and to resolve any issue regarding jurisdiction in this case, we are reviewing this case in the exercise of our certification authority. *See* 8 C.F.R. § 1003.1(c). The respondent contends that the DHS appeal is untimely and that the Board therefore does not have jurisdiction to consider the appeal. The record reflects that the merits hearing in this matter was held on August 4, 2017. At the conclusion of the hearing, the Immigration Judge indicated that a decision would be issued at a later date (Tr. at 112-14). On September 28, 2017, the Immigration Judge dictated an oral decision outside the presence of the parties (Tr. at 115). On the same day, the Immigration Judge completed a short form order. The certificate of service indicates that the form order was placed in the mail on October 2, 2017. The DHS Notice of Appeal was received at the Board on November 1, 2017, within 30 days of the mailing of the form order. *See* 8 C.F.R. § 1003.38(b). Given these facts, we conclude that it is appropriate to consider this appeal via certification.

The parties do not contest the respondent's statutory eligibility to apply for cancellation of removal. Instead, the determinative issue in this case is whether the respondent has adequately shown that he warrants such relief in the exercise of discretion. The Immigration Judge concluded that he made this showing and granted relief. On appeal, the DHS contends that the respondent was not credible and is not deserving of a grant of relief in the exercise of discretion.

We are unpersuaded by the DHS argument that the respondent was not credible (DHS Br. at 9-11).[1] *See* 8 C.F.R. § 1003.1(d)(3)(i); *Anderson v. City of Bessemer City, North Carolina*, 470 U.S. 564, 573-74 (1985) (holding that where there are two permissible views of the evidence, the fact finder's choice between them cannot be deemed clearly erroneous); *Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003) (stating that the Board may overturn an Immigration Judge's findings of fact only when it "is left with the definite and firm conviction that a mistake has been committed.") (*quoting United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)) (internal quotation marks omitted). While we acknowledge the DHS argument regarding the respondent's testimony relating to the circumstances underlying his convictions and the amount of support he provides to his family members, in light of the Immigration Judge's decision, it does not persuade us that the respondent is not credible.

Upon de novo review, we conclude that the respondent has established that he warrants cancellation of removal as a matter of discretion. Section 240(c)(4)(A)(ii) of the Act, 8 U.S.C. § 1229a(c)(4)(A)(ii); 8 C.F.R. § 1240.8(d); *Matter of Sotelo*, 23 I&N Dec. 201 (BIA 2001); *Matter of C-V-T-*, 22 I&N Dec. 7 (BIA 1998); *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978).

Among the factors deemed adverse to an alien are the nature and underlying circumstances of the removability ground at issue; the presence of additional significant violations of this country's immigration laws; the existence of a criminal record and, if so, its nature, recency, and seriousness; and the presence of other evidence indicative of a respondent's bad character or undesirability as a permanent resident of the United States. *Matter of C-V-T-*, 22 I&N Dec at 11.

Favorable considerations include such factors as family ties within the United States, residence of long duration in this country (particularly when the inception of residence occurred while the respondent was of young age), evidence of hardship to the respondent and family if deportation occurs, service in this country's Armed Forces, a history of employment, the existence of property or business ties, evidence of value and service to the community, proof of genuine rehabilitation if a criminal record exists, and other evidence attesting to a respondent's good character (e.g., affidavits from family, friends, and responsible community representatives). *Id.*

The Immigration Judge correctly articulated these factors and appropriately applied them to the fact presented by the parties in this case (IJ at 8-10). Overall, upon consideration of the totality of the record and a balancing of the appropriate factors, though an extremely close case, the positive equities and humanitarian factors sufficiently offset the respondent's criminal history such that we conclude that a discretionary grant of cancellation of removal is warranted.

We caution the respondent that this "second chance" to remain in the United States is a 1-time opportunity. Section 240A(c)(6) of the Act. Future criminal behavior may result in the loss of his permanent resident status and his possible removal from the United States.

[1] The Immigration Judge did not make a specific finding on the respondent's credibility and the respondent is presumed to be credible. *See* section 240(c)(4)(C) of the Act, 8 U.S.C. § 1229a(c)(4)(C).

Accordingly, the following orders will be entered.

ORDER: The Department of Homeland Security's 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

Temporary Board Member John P. Crossett respectfully dissents and would deny the respondent's application for cancellation of removal in discretion.