



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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180 Spring Street, Suite 332
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Name: KIM, CHONG SIK

A 098-728-227

Date of this notice: 2/19/2014

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

williame
Userteam: Docket

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Falls Church, Virginia 20530

File: A098 728 227 – Atlanta, GA

Date: FEB 19 2014

In re: CHONG SIK KIM

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Bonnie M. Youn, Esquire

ON BEHALF OF DHS: Njeri B. Maldonado
Assistant Chief Counsel

CHARGE:

Notice: 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)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] -
Fraud or willful misrepresentation of a material fact

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)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -
Immigrant - no valid immigrant visa or entry document

APPLICATION: Termination of proceedings

The Department of Homeland Security (“DHS”) appeals the Immigration Judge’s decision dated October 19, 2011, terminating the respondent’s proceedings. The record will be remanded to the Immigration Judge for further proceedings consistent with this opinion and for entry of a new decision.

On appeal, the DHS disputes the Immigration Judge’s finding that it did not sustain its burden of proof in establishing the respondent’s removability as charged based on the facts in this case. *See* DHS’s Brief at 3-7.¹ In particular, the DHS contends that the Immigration Judge erred in finding the respondent did not participate and/or acquiesce in the admitted fraud used by his prior attorney to obtain his visa upon which he entered the United States and adjusted his status. *See* DHS’s Brief at 3-5. Likewise, the DHS argues that the Immigration Judge erred in finding the respondent entered on a valid immigrant visa where the visa was obtained, admittedly, through fraud. *See* DHS’s Brief at 5-7.

We find that the Immigration Judge’s written decision provides an insufficient basis upon which the Board can adequately conduct a meaningful review. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). In this regard, we note that the Immigration Judge’s decision regarding the

¹ The DHS’s untimely brief was accepted on March 12, 2012.

issue of whether the DHS met its burden of proof as to the respondent's removability is contained only in the transcript, which is incorporated "by reference" by the Immigration Judge in his very brief written decision (I.J. at 2; Tr. at 143-50). Given the complexity and importance of the issue of removability, the extensive witness testimony and documentary evidence in the record, and the piecemeal fashion in which the transcript contains the Immigration Judge's findings of fact and law, we cannot properly adjudicate the DHS's appeal.

Upon preparation of the full decision, the Immigration Judge shall issue an order administratively returning the record to the Board. The Immigration Judge shall serve the administrative return order on the respondent and the DHS. The Board will thereafter give the parties an opportunity to submit briefs in accordance with the regulations.

Accordingly, the record will be remanded to the Immigration Judge for preparation of a full decision. The record will then be returned to the Board for adjudication of the DHS's appeal.

ORDER: The record is remanded to the Immigration Judge for preparation of a full decision.

FURTHER ORDER: The record shall be returned to the Board for adjudication of the DHS's appeal.


FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ATLANTA, GEORGIA

File: A098-728-227

October 19, 2011

In the Matter of

CHONG SIK KIM

RESPONDENT

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)
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IN REMOVAL PROCEEDINGS

CHARGES: Section 237(a)(1)(A), Section 212(a)(6)(C)(i),
and Section 212(a)(7)(A)(I) of the Immigration
and Nationality Act.

APPLICATION: Termination.

ON BEHALF OF RESPONDENT: BONNIE YOUN

ON BEHALF OF DHS: MARY LEE

ORAL DECISION OF THE IMMIGRATION JUDGE

PROCEDURAL BACKGROUND

This case came before the Court as the result of a Notice to Appear that was issued by the Department of Homeland Security. Later, the Government filed additional charges in this case. The respondent has admitted some of the allegations, but not all. The respondent takes the position that he did not

engage in fraud in this case. The Government argues that the respondent was inadmissible because he engaged in fraud and, therefore, needed a visa to enter the United States.

A hearing was held in this matter to determine whether the charges should be sustained. The Court previously had issued a decision on that matter and that decision is incorporated herein by reference.

In sum, the respondent testified that he did not intend to defraud the Government when he filed and was the beneficiary of an I-140 visa petition. The Court listened to the testimony of the Government's witness in this case. Mr. Kevin Heerlein testified in this case and Mr. Heerlein's testimony is that the respondent apparently intended to work for the petitioning company at the time he moved to pursue employment.

Respondent testified that he did not intend to defraud the Government and that he fully intended to comply with the conditions of the visa.

The Court finds that the Government has not sustained its charge of removability in this case. The respondent has his status adjusted in the United States. There is no indication that he engaged in fraud and, therefore, he did not need a visa to enter the United States. In view of the foregoing, the Court has not sustained the charges of removal in this case.

The Court also gave the Government an opportunity to

revoke the visa in this matter. The Court determined that if there was anything that appeared proper, it was for the Government to revoke the visa, in which case the respondent would not have the appropriate document to enter the United States. The Government has taken no steps to revoke the visa. In fact, even though the Court gave the Government several opportunities to revoke the visa if the Government thinks that the visa was improvidently issued, the Government has advised the Court that it does not wish to do so. The Court is in the position of having the respondent entering on the visa, which the Government has chosen not to revoke. The Court found that the respondent did not engage in fraud in connection with that entry. Having determined that the respondent has a valid visa to enter the United States and that he adjusted under that visa, that the Government is not revoking that visa, the Court finds the respondent is a lawful permanent resident of the United States. He does not need any visa or other document to enter the United States besides the visa that he has that has not been revoked. He is a lawful permanent resident and the Court will terminate these proceedings.

ORDER

IT IS HEREBY ORDERED that the proceedings against respondent be terminated.



EARLE B WILSON
United States Immigration Judge

CERTIFICATE PAGE

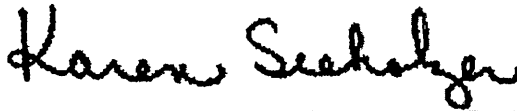
I hereby certify that the attached proceeding before JUDGE
EARLE B WILSON, in the matter of:

CHONG SIK KIM

A098-728-227

ATLANTA, GEORGIA

is an accurate, verbatim transcript of the recording as provided
by the Executive Office for Immigration Review and that this is
the original transcript thereof for the file of the Executive
Office for Immigration Review.



KAREN SEEHOLZER (Transcriber)

DEPOSITION SERVICES, Inc.

NOVEMBER 27, 2011

(Completion Date)