U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: CHIBUZOR MBONU, GILES

A 057-731-341

Date of this notice: 2/27/2017

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:
Kendall Clark, Molly

Userteam: Docket

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1901 S. Bell Street, Suite 900
Arlington, VA 22202

Name: CHIBUZOR MBONU, GILES

A 057-731-341

Date of this notice: 2/27/2017

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Kendall Clark, Molly

Userteam:

File: A057 731 341 – Arlington, VA

Date: FEB 27 2017

In re: GILES CHIBUZOR MBONU

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Kamah Gueh Thoronka, Esquire

APPLICATION: Reopening

On December 9, 2016, the Board dismissed the respondent's appeal from the Immigration Judge's June 29, 2016, decision denying his applications for adjustment of status and concurrent waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h). On January 23, 2017, the respondent filed the instant motion, followed by supplemental documentation, with the Board. By its content, the motion is in the nature of a timely motion to reopen. *See Matter of Cerna,* . 20 I&N Dec. 399, 402 n. 2 (BIA 1991) (discussing the characteristics of motions to reopen and motions to reconsider); section 240(c)(7) of the Act, 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c). The Department of Homeland Security has not opposed this motion. The motion will be granted and the record will be remanded to the Immigration Judge for further proceedings.

The Immigration Judge found the respondent removable as an alien convicted of a crime involving moral turpitude due to his conviction on August 28, 2006, for sexual battery in violation of section 18.2-67.4 of the Virginia Code for which he was sentenced to 12 months' imprisonment. *See* section 237(a)(2)(A)(i) of the Act, 8 U.S.C. § 1227(a)(2)(A)(i). The Immigration Judge also determined that the crime underlying the respondent's conviction for sexual battery is a violent or dangerous crime.

In order to adjust status, the respondent must first obtain a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). An alien may establish eligibility for a section 212(h) waiver if he establishes that he has been rehabilitated, or that the denial of his admission would result in extreme hardship to his United States citizen or lawful permanent resident spouse, parent, son, or daughter. *See* section 212(h)(l)(A) of the Act. Pursuant to 8 C.F.R. § 1212.7(d), however, "[t]he Attorney General, in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstance such as [] cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship."

The respondent has a United States citizen wife and two children. The respondent's son, who was 5 months old at the time of the Immigration Judge's decision, suffers from skeletal dysplasia. The Immigration Judge denied the section 212(h) waiver, finding that the respondent did not establish exceptional and extremely unusual hardship, and noting that the respondent did not provide adequate information regarding his son's medical problems.

With the instant motion, the respondent has now offered additional evidence, including medical evidence pertaining to his son's condition, and a statement from his wife relevant to the hardship she believes that she will likely suffer as a result of the respondent's removal to Nigeria (Motion Exhibits A-D). Upon consideration, we will grant the motion to reopen and remand the record to the Immigration Judge for further consideration of the respondent's eligibility for the section 212(h) waiver, and for other action as deemed appropriate. The Board, however, expresses no opinion at this time regarding the ultimate outcome of this case. Accordingly, the following orders will be entered.

ORDER: The motion to reopen is granted.

FURTHER ORDER: The removal proceedings are reopened and the record is remanded to the Immigration Judge for further proceedings consistent with this decision.

FOR THE BOARD