U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: ALLSOPP, MARIE ANNE

A 036-886-149

Date of this notice: 3/6/2018

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:
Cole, Patricia A.
Wendtland, Linda S.
Pauley, Roger

Userteam: Docket

File: A036 886 149 – Buffalo, NY

Date: MAR - 6 2018

In re: Marie Anne ALLSOPP a.k.a. Marie Mercurius

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew Lorn Hoppock, Esquire

APPLICATION: Termination

The respondent, a native of Guyana and a citizen of Barbados, appeals from the Immigration Judge's February 22, 2017, decision. In that decision, the Immigration Judge determined that the respondent is inadmissible under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I).[1] The record will be remanded.

The procedural history of this case is as follows. The respondent was admitted to the United States as a lawful permanent resident in 1981. In 1986, when the respondent was a minor, the respondent's mother filed a form relinquishing the respondent's lawful permanent resident status. In the February 22, 2017, decision, the Immigration Judge determined that the respondent's prior counsel conceded that the respondent had abandoned her lawful permanent resident status during the underlying proceedings and that she did not establish egregious circumstances rebutting her prior counsel's concession.

On appeal, the respondent argues that the Immigration Judge erred in determining that she is inadmissible as charged. Specifically, she argues that the Immigration Judge erred in determining that she abandoned her lawful permanent resident status.

This Board must defer to the Immigration Judge's factual findings, including findings as to the credibility of testimony, unless they are clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review questions of law, discretion, and judgment de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

We conclude that remand of the record is warranted. An alien lawfully admitted for permanent residence in the United States is not regarded as seeking admission unless, among other things, the alien has abandoned or relinquished that status. *See* section 101(a)(13)(C) of the Immigration and Nationality Act, 8 U.S.C § 1101(a)(13)(C). Where an applicant for admission to the United States has a colorable claim to returning resident status, the burden is on the Department of Homeland Security ("DHS") to show by clear and convincing evidence that the applicant should be deprived of her lawful permanent resident status. *Matter of Rivens*, 25 I&N Dec. 623 (BIA 2011); *Matter of Huang*, 19 I&N Dec. 749 (BIA 1988). In determining whether the DHS has met its

[1] We note that this case was originally heard by a different Immigration Judge. However, during the underlying proceedings, the current Immigration Judge indicated that he had familiarized himself with the record of proceedings in its entirety pursuant to 8 C.F.R. § 1240.1(b).

burden of proof, we look to whether the alien is returning to an unrelinquished lawful permanent residence after a temporary visit abroad. *Matter of Huang*, 19 I&N Dec. at 753. An alien's professed intent to return to the United States without more is not sufficient to support the alien's case. *Matter of Huang,* 19 I&N Dec. at 755. To ascertain an alien's intent to abandon lawful permanent resident status, the Immigration Judge must examine not just the amount of time the individual was absent from the United States, but also the location of her family ties, property holdings, job, etc. *See Matter of Huang*, 19 I&N Dec. at 755-57.

In this case, contrary to the Immigration Judge, we conclude that the respondent's actions, which included obtaining numerous admissions to the United States as a non-immigrant, attempting to reacquire her status through her congressman, and attempting to obtain a labor certification, do not support the conclusion that she intended to abandon her status (IJ at 3). Moreover, we disagree with the Immigration Judge's determination that the respondent's prior counsel clearly conceded that the respondent had abandoned her lawful permanent resident status (IJ at 2; Tr. at 35-36). The record reveals that although the respondent's prior counsel indicated that he was conceding the abandonment issue, he and the respondent nonetheless challenged the DHS's assertion that the respondent intended to abandon her status (Tr. at 18, 20, 23-24, 35-36, 39-47, 52-53). Furthermore, the Immigration Judge did not consider the respondent's testimony that her mother was coerced into abandoning the respondent's lawful permanent resident status (Tr. at 156-57, 143-44). We therefore conclude that remand of the record is warranted for the Immigration Judge to make findings of fact regarding whether the respondent's mother was coerced into abandoning the respondent's lawful permanent resident status and to reassess whether egregious circumstances existed (Tr. at 56-57, 143). *See* 8 C.F.R. § 1003.1(d)(3)(iv) (providing that, subject to certain exceptions not applicable to the present case, "the Board will not engage in factfinding in the course of deciding appeals").

Accordingly, the following order will be entered.

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

FOR THE BOARD

Board Member Roger A. Pauley respectfully dissents. The record plainly shows that respondent's counsel, on more than one occasion, conceded that the respondent had abandoned her lawful permanent resident status due to her mother's having done so on her behalf when she was a young child. *See* Tr. 36, 46-47; *Matter of Zamora,* 17 I&N Dec. 395 (BIA 1980). The Immigration Judge properly held that the respondent was bound by her attorney's concession under *Hoodho v. Holder,* 558 F.3d 184 (2d Cir. 2009).