U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: M[redacted] U[redacted], A[redacted] **A [redacted]-567**

Date of this notice: 11/8/2018

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:
Guendelsberger, John
Kendall Clark, Molly
Adkins-Blanch, Charles K.

Userteam: Docket

File: [redacted]-567 – Arlington, VA

Date: NOV - 8 2018

In re: A[redacted] M[redacted]-U[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Benjamin R. Winograd, Esquire

ON BEHALF OF DHS: Christopher Gahm
Assistant Chief Counsel

APPLICATION: Cancellation of removal

In a decision dated June 8, 2018, the Immigration Judge found the respondent removable under section 237(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(B)(i) (alien convicted of a controlled substance violation); granted a motion by the Department of Homeland Security (DHS) to pretermit any application by the respondent for cancellation of removal under section 240A(a) of the Act, 8 U.S.C. § 1229b(a); and ordered the respondent's removal to Mexico. The respondent now appeals from the Immigration Judge's decision with regard to relief under section 240A(a) of the Act. The DHS opposes this appeal. The appeal will be sustained, and the record remanded to the Immigration Judge.

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

The respondent admitted that he arrived in the United States at an unknown date without inspection; adjusted his status to that of lawful permanent resident on November 14, 2007; and was convicted on May 29, 2015, and again in May 23, 2016, for violations of Virginia Criminal Code section 18.2-250.1 (unlawful possession of marijuana) (IJ at 3-5; Tr. at 3-4). The Immigration Judge determined that the crime underlying the respondent's May 29, 2015, conviction was committed on July 20, 2014 (IJ at 4; Exhs. 1, 3-E, 6-H). Based on these facts, the Immigration Judge determined that the respondent could not establish the 7 years of continuous residence required to qualify for cancellation of removal. *See* sections 240A(a)(2), (d)(1) of the Act; *see also* sections 212(a)(2)(A)(i)(II), 237(a)(2)(B) of the Act, 8 U.S.C. §§ 1182(a)(2)(A)(i)(II), 1227(a)(2)(B). In finding that the respondent did not accrue the requisite period of continuous residence for cancellation of removal, the Immigration Judge also determined that the respondent's status as a "V" nonimmigrant from July 15, 2002, was not an "admission" under section 101(a)(13)(A) of the Act, 8 U.S.C. § 1101(a)(13)(A) (IJ at 5; *see* Respondent's Br., 05/25/2018, Exh. N).

On appeal, the respondent challenges the imposition of the "stop-time" rule at section 240A(d)(1) of the Act to his case, arguing, inter alia, that "he was admitted in any status"

for purposes of cancellation of removal when he was accorded V nonimmigrant status on July 15, 2002. On de novo review, we find that a grant of V nonimmigrant status constitutes an admission for the purpose of section 240A(a)(2) of the Act.

A "V" visa is intended to promote family unity, and allows certain relatives of lawful permanent residents to continue their wait for immigrant visas while living in the United States with their families. *See* section 101(a)(15)(V) of the Act. Pursuant to the regulations at 8 C.F.R. § 214.15(a), an alien aboard "may apply for a V nonimmigrant visa at a consular office [] and be admitted to the United States." Pursuant to 8 C.F.R. § 214.15(b), "[e]ligible aliens already in the United States may apply to the Service to obtain V nonimmigrant status for the same purpose," and [a]liens in the United States in V nonimmigrant status are entitled to reside in the United States as V nonimmigrants []." The regulation as 8 C.F.R. § 214.15(g) sets forth the "[p]eriod of admission" for those in V nonimmigrants status, regardless of whether they applied for the V nonimmigrant status aboard or in the United States. The use of the phrase "period of admission" at 8 C.F.R. § 214.15(g) can be reflective of Congress's understanding that a grant of V nonimmigrant status is a form of "admission," independent of the kinds of "lawful entr[ies]" contemplated by the language of section 101(a)(13)(A) of the Act. That understanding is consistent with the Immigration and Nationality Act and regulations that reference and consistently treat nonimmigrants as "admitted" aliens.[1] *See Matter of Blancas*, 23 I&N Dec. 458 (BIA 2002) (holding that acquisition of lawful nonimmigrant status is an "admission" for purposes of establishing an alien's eligibility for cancellation of removal).

Inasmuch as the respondent was admitted to the United States on July 15, 2002, the offense committed on July 20, 2014, would not stop the accrual of the 7 years of continuous residence required for cancellation of removal. Therefore, we will sustain the appeal and remand the record to the Immigration Judge to enable the respondent to apply for cancellation of removal under section 240A(a) of the Act. Because we are remanding the record on this basis, we will not, at this time, consider the alternative arguments set forth on appeal. Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

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

FOR THE BOARD

[1] Section 214 of the Act, 8 U.S.C. § 1184, provides for "[t]he admission to the United States of any alien as a nonimmigrant" at section 214(a)(l), and includes a specific provision for the issuance of "V" visas at section 214(q) of the Act, thereby implying that the specific "V" visa procedures constitute a subset of the general "admission" procedures. Further, at section 101(a)(13)(B) of the Act, Congress provided that parolees and crewmen shall not be considered to have been admitted, but set forth no such exclusion for "V" visa recipients.