



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: COUTINHO, JOAO

A 098-236-413

Date of this notice: 2/11/2014

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:
Creppy, Michael J.

yungc
Userteam: Docket

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Falls Church, Virginia 20530

File: A098 236 413 – Boston, MA

Date:

FEB 11 2014

In re: JOAO COUTINHO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Bennett C. Jaffee, Esquire

APPLICATION: Adjustment of status

The respondent, a native and citizen of Cape Verde, appeals the Immigration Judge's October 5, 2011, decision denying his application for adjustment of status under section 245 of the Act, 8 U.S.C. § 1255. The record will be remanded.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

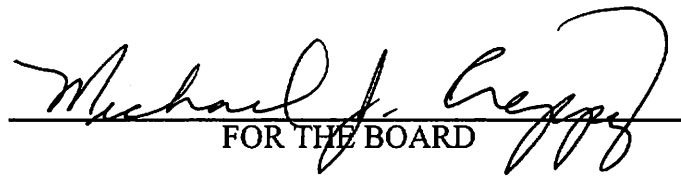
As the respondent's application for relief was filed after May 11, 2005, it is governed by the provisions of the REAL ID Act. *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

The Immigration Judge denied the respondent's application for adjustment of status solely as a matter of discretion, based upon finding that the respondent and his United States citizen wife had lied to the Court regarding the nature and circumstances of an alleged physical altercation between the two in which the police were called and the respondent was arrested (I.J. at 3). The Immigration Judge found that their testimony was in contradiction to the police report, which stated that the respondent's wife told the officers that the respondent had slapped her three or four times, and which stated that the officers had observed red marks on the respondent's wife's face and neck.

The Immigration Judge's decision, however, lacks any findings of fact related to the respondent's positive equities, as well as any other adverse factors, including whether the alleged physical altercation resulted in a criminal conviction. The decision also lacks any analysis or indication that the Immigration Judge carefully considered and balanced all favorable and adverse factors presented in determining whether the respondent warrants relief as a matter of discretion. See *Matter of Sotelo*, 23 I&N Dec. 201, 204 (BIA 2001); *Matter of C-V-T-*, 22 I&N Dec. 7, 10-11 (BIA 1998); see also *Matter of S-H-*, 23 I&N Dec. 462, 465 (BIA 2002) (because the Board has limited fact-finding authority, there is a heightened need for Immigration Judges to include clear and complete findings of fact in their decisions). In light of this very limited record, we are precluded from meaningfully reviewing de novo the Immigration Judge's discretionary denial. See generally *Matter of S-H-*, 23 I&N Dec. 462, 463-65 (BIA 2002).

Accordingly, the record will be remanded to the Immigration Judge for additional fact-finding and for a new determination as to whether the respondent warrants adjustment of status as a matter of discretion based upon a balancing of the respondent's equities and adverse factors. On remand, the parties should be given the opportunity to submit additional relevant evidence and to make additional arguments. By remanding, we make no determination regarding the ultimate outcome of this case; rather, that decision rests in the first instance with the Immigration Judge. *See Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996). The following order will be entered.

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


FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BOSTON, MASSACHUSETTS

File: A098-236-413

October 5, 2011

In the Matter of

JOAO COUTINHO

RESPONDENT

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IN REMOVAL PROCEEDINGS

CHARGES: 237(a)(1)(B) - remained in the United States for
a period of time longer than permitted.

APPLICATIONS: Adjustment of status (I-130).

ON BEHALF OF RESPONDENT: BENNETT JAFFEE

ON BEHALF OF DHS: BERNARD MENENDEZ

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 29-year-old native and citizen of Cape Verde. The Government has charged the respondent in the Notice to Appear as referenced above. Based upon review of all evidence in the record of proceeding, the Court finds by clear, convincing and unequivocal evidence that the respondent is removable, and directs the country of Cape Verde as the country of removal. The respondent has applied for relief in the form

of adjustment of status pursuant to an approved I-130 visa petition filed on his behalf by his United States citizen wife, with whom he has fathered three United States citizen children.

The parties appear to be engaged in a bona fide marriage. The support affidavits presented by the respondent and his sponsor meet the statutory and regulatory guidelines, and the respondent's medical examination is clear. However, during the course of the merits hearing with regard to this matter, the Court reviewed the information contained in Exhibit 4, which is a police report with regard to an incident occurring on or about February 22, 2010 in the city of Brockton.

The four paragraph narrative, which the Court marks as Exhibit 4-A, describes this incident. Particularly, it describes the Brockton Police Department receiving a 911 emergency call from a female, stating "that her husband was assaulting her." The call quickly ended. When the officers went to the respondent's apartment, they took a statement from both the respondent and his wife, Josefina. The respondent stated that "he and Josefina pushed each other a little bit." The respondent then refused to talk to the police officers further. The officers then interviewed the respondent's wife, Josefina, who stated "that Joao slapped her three or four times." The respondent was placed under arrest. In the last paragraph of the police report, the officers "observed a red mark on the left side of her face, and a red mark on the right

side of her neck," referring to the respondent's wife, Josefina.

During their testimony today at the merits hearing with regard to this matter, both ^{parties} ~~respondents~~ denied that any sort of physical altercation had taken place between the parties. Particularly, the respondent denied that he had slapped Josefina. Josefina was adamant that she had not been slapped. Both the respondent and his wife took the position that the police officers writing the report had been untruthful in their report. However, neither was able to offer any rationale for why these Brockton police officers being called to this 911 emergency call would manufacture this police report and to make up the observations of the red marks on the respondent's wife, nor can the Court find any possible reason why the police officers would make up these observations, as well as make up the statements which they report from Josefina that she had been slapped by the respondent.

The Court finds that both the respondent and his wife have been untruthful with the Court in their testimony today. Because of this, the Court finds that they did not honor their obligation to testify truthfully after being administered the oath requiring them to do so. The Court finds that they have lied under oath. This is a very serious matter in the Court's consideration, and it is a matter of discretion. Because of this, the Court will deny and hereby does deny this application for adjustment of status. As the respondent has no other means

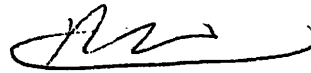
of relief that he is seeking or claiming, he is hereby ordered removed to the country of Cape Verde.

The following order shall enter.

ORDER

The respondent's application for adjustment of status is hereby denied.

The respondent is ordered removed to the country of Cape Verde.



PAUL M. GAGNON
United States Immigration Judge

CERTIFICATE PAGE

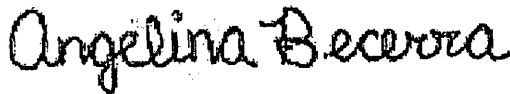
I hereby certify that the attached proceeding before JUDGE
PAUL M. GAGNON, in the matter of:

JOAO COUTINHO

A098-236-413

BOSTON, MASSACHUSETTS

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.


A circular stamp is visible above the signature, containing the text "DECEMBER 16 2011".

ANGELINA BECERRA (Transcriber)

DEPOSITION SERVICES, Inc.

DECEMBER 16, 2011

(Completion Date)