



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: K [REDACTED], C [REDACTED] J [REDACTED]

A [REDACTED]-138

Date of this notice: 6/19/2019

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:
Adkins-Blanch, Charles K.
Kelly, Edward F.
Morris, Daniel

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-138 – Dallas, TX

Date:

JUN 19 2019

In re: C [REDACTED] J [REDACTED] K [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Michael W. Canton, Esquire

APPLICATION: Adjustment of status; waiver of inadmissibility under section 212(i)

The respondent appeals from the Immigration Judge's decision dated December 6, 2017, denying his application for adjustment of status pursuant to section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i), sought in conjunction with a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1152(i). The Department of Homeland Security has not filed any opposition to the respondent's appeal. The appeal will be sustained.

We review an Immigration Judge's findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).


Upon de novo review, we conclude that the respondent has demonstrated that his lawful permanent resident wife would suffer extreme hardship upon his removal. The respondent's wife, age 63, testified that she would relocate with the respondent to South Korea in the event of his removal (IJ at 11, 15; Tr. at 124). This would result in her separation from her 90-year-old father and 81-year-old mother, as well as her two United States citizen siblings, two lawful permanent resident children (one of whom suffers from chronic kidney disease) and 1-year-old grandchild (IJ at 10-11; Tr. at 44-45, 114, 120-121, 127). The respondent's wife would lose the home and business she owns, and face relocation to a country she left nearly 25 years ago (IJ at 11; Tr. at 125). In light of the foregoing, we conclude that the respondent has sufficiently established that his wife would suffer extreme hardship upon his removal. *See Matter of Cervantes*, 22 I&N Dec. 560 (BIA 1999); *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984) (extreme hardship will be found only in cases of great actual or prospective injury to a qualifying relative).

Furthermore, we consider de novo the relevant discretionary factors and conclude that the respondent merits a waiver of inadmissibility in the exercise of discretion. *See Matter of Mendez*, 21 I&N Dec. 296, 299 (BIA 1996). This is a close case, as there are both substantial equities and the respondent's commission of significant immigration-related fraud. We share the Immigration Judge's condemnation of the respondent's actions leaving South Korea with fraudulent documents procured via a "broker," and entering the United States without inspection. Further, the respondent was the beneficiary of an employment-based visa petition filed in 2004 through an attorney that was later revoked due to indications of fraud (Exh. 2). However, we find that these factors are outweighed by the respondent's equities, including his employment history, business ownership, payment of taxes, lawful permanent resident wife and children, longterm residence in this country,

home ownership, volunteer work in the community, and the hardship to the respondent and his wife and children resulting from his removal (IJ at 5, 8, 10-11; Exhs. 6, 9). While we commend the Immigration Judge on his thoughtful consideration of this case, the balance of both positive and negative factors leads to a favorable exercise of discretion. Therefore, we will sustain the respondent's appeal and remand the matter solely for the required security checks. Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).



FOR THE BOARD