U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: SUPANTIRA , PERRY

A 072-858-363

Date of this notice: 11/7/2019

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:
Wilson, Earle B.
Cole, Patricia A.
Cassidy, William A.

Userteam: Docket

File: A072-858-363 – Los Angeles, CA Date: NOV - 7 2019

In re: Supantira PEERY a.k.a. Supantira Pinvisas a.k.a. Supantira Ssathapornuiriyakul a.k.a. Perry Supantira

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Haleh Zarkesh, Esquire

APPLICATION: Adjustment of status

The respondent, a native and citizen of Thailand, appeals from the Immigration Judge's February 22, 2018, decision. In that decision, the Immigration Judge denied the respondent's application for adjustment of status under section 245(a) of the Immigration and Nationality Act, 8 U.S.C. § 1255(a). On appeal, the respondent argues that the Immigration Judge erred in determining that she did not warrant adjustment of status as a matter of discretion. The appeal will be sustained.

We review for clear error the findings of fact, including determinations 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). *See also Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015).

We disagree with the Immigration Judge's decision denying the respondent's application for adjustment of status. It is not disputed that the respondent is statutorily eligible for adjustment of status under section 245(a) of the Act. Nevertheless, the Immigration Judge's determined that a favorable exercise of discretion is not warranted in this case (IJ at 6-8). *See* section 240(c)(4)(A)(ii) of the Act (providing that it is the alien's burden to establish that he merits a favorable exercise of discretion), 8 U.S.C. § 1229a(c)(4)(A)(ii); 8 C.F.R. § 1240.8(d). When exercising discretion, we consider the totality of the evidence and weigh the positive and negative factors presented. *See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996); *Matter of Arai*, 13 I&N Dec. 494 (BIA 1970).

In this case, the respondent has a lengthy residence in the United States, as well as family ties to the United States in the form of her United States citizen husband (IJ at 7; Tr. at 53). In the February 22, 2018, decision, the Immigration Judge determined that the respondent married her United States citizen husband purely for immigration purposes (IJ at 7). We disagree. Although the respondent did not marry her husband until after she was placed in removal proceedings, she had been in a relationship with him for many years before their marriage (IJ at 7; Tr. at 53). Moreover, the respondent's husband testified during the underlying proceedings in support of the respondent's application for relief (IJ at 7). We conclude, contrary to the Immigration Judge, that the fact that the respondent's husband testified that he did not think it would hurt the respondent's

immigration status for them to marry is insufficient to establish that they married solely for immigration purposes, especially given the lengthy status of their relationship (IJ at 7; Tr. at 88).

Although the respondent also has a criminal history in the United States, including convictions for theft, domestic violence, and driving under the influence, all of her convictions were misdemeanors (IJ at 7; Tr. at 54-67). Furthermore, we disagree with the Immigration Judge's determination that the respondent was not forthcoming about her offenses (IJ at 7). Instead, the record reveals that the respondent admitted her three offenses from the beginning of the underlying proceedings and any discrepancies in the respondent's testimony about her offenses resulted from her nervousness or confusion (IJ at 7; Tr. at 54-67, 74-76, 93). Similarly, although the Immigration Judge found that the respondent was not forthcoming about her work history in the United States, we conclude that this was a result of the respondent's confusion during the underlying proceedings (IJ at 7-8; Tr. at 73, 93-101). In sum, we disagree with the Immigration Judge's determination that the respondent's equities are outweighed by the adverse factors in her case.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained, and the Immigration Judge's February 22, 2018, decision is vacated.

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