



U.S. Department of Justice

Executive Office for Immigration Review

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

A [REDACTED]-671

Date of this notice: 9/26/2019

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:
Mullane, Hugh G.
Mann, Ana
Kelly, Edward F.

User team: Docket

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RL

Falls Church, Virginia 22041

File: A-671 – Buffalo, NY

Date:

SEP 26 2019

In re: E- J-

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sergio Tapia, Esquire

APPLICATION: Cancellation of removal

The respondent, a native and citizen of Guyana, appeals from the Immigration Judge's decision dated February 14, 2018, denying his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The Department of Homeland Security (DHS) has not filed an appeal brief. The appeal will be sustained.

We review the findings of fact, including the determination of credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002). We review all other issues, including issues of law, discretion, and judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge determined, based on discrepancies between the respondent's testimony and the Record of Deportable Alien, Form I-213, regarding the respondent's manner of entry into the United States, that the respondent had not established good moral character or that he was deserving of cancellation of removal in discretion (IJ at 6-10).¹ The respondent argues on appeal that the Immigration Judge violated his Due Process rights by relying on a Form I-213 that contains inaccurate information.

In order to be eligible for cancellation of removal, an alien must establish, among other things, that he has been a person good moral character for 10 years immediately preceding the date of such application. *See* section 240A(b)(1)(B) of the Act, 8 U.S.C. § 1229b(b)(1)(B). Section 101(f) of the Act, 8 U.S.C. § 1101(f), provides for several classes of persons who are statutorily unable to establish good moral character, and it further states that "[t]he fact that any person is not within the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character."

The Form I-213 is "presumptively reliable and can be admitted in deportation proceedings." *Matter of Felzerek v. INS*, 75 F.3d 112, 117 (2d Cir. 1996). "[A]bsent any indication that a Form I-213 contains information is incorrect or was obtained by coercion or duress, that document is inherently trustworthy and admissible as evidence to prove alienage and deportability." *Matter of Barcenas*, 19 I&N Dec. 609, 611 (BIA 1980).

¹ The DHS conceded that the respondent established continuous physical presence and exceptional and extremely unusual hardship to his family. (IJ at 5-6).

The Immigration Judge based his findings on inconsistencies between the respondent's testimony and statements contained in the Form I-213 over his manner of entry. The respondent testified that he entered the United States on a cruise ship (Tr. at 51-53, 65-67, 75-80). However, the Form I-213 reflects that the respondent told an immigration officer that he arrived in the United States by air at JFK International, and that he fraudulently used the passport of a United States citizen to enter (Exh. 2). On appeal, the respondent argues that the Form I-213 contained "material errors that severely undermine the reliability of the form and credibility of the statements therein" (Respondent's Br. at 4).


We acknowledge the concerns of the Immigration Judge but do not conclude that the information in the Form-I-213 in this case is insufficient to support a finding of lack of good moral character or a denial in discretion. While a Form-I-213 is an inherently reliable document, there are substantial errors in the document at issue in this case. As noted by the respondent, the Form I-213, which is dated June 7, 2016, states that the respondent had been served a Notice to Appear with charges under sections 237(a)(1)(A) and 212(a)(6)(C)(i) of the Act. The record reflects, however, that the Notice to Appear was issued in this case on June 14, 2016, one week after the Form-I-213 was generated, and contains a sole charge under section 212(a)(6)(A)(i) of the Act. The respondent also notes that his passport number and his height are incorrect on the Form I-213. Moreover, regardless of whether the respondent entered by air or ship, his initial entry into this country was illegal, which is similar to most applicants for cancellation of removal under section 240A(b) of the Act.

The issues of continuous physical presence or exceptional and extremely unusual hardship for cancellation of removal were conceded in this case. We conclude that the remaining issues of good moral character and discretion should not be based on a Form-I-213 that has been shown to contain substantial errors. Absent a discrepancy over entry, the record reflects that the respondent is otherwise eligible for, and deserving of, a grant of cancellation of removal.

Accordingly, the following order will be entered.

ORDER: The 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

Board Member Hugh G. Mullane dissents without separate opinion.