U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [redacted] Seattle

Date: JUL 14 2003

In re: [redacted]

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jeannette Zanipatin, Esquire

ON BEHALF OF DHS: Tammy L. Fitting
Assistant District Counsel

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] -
Entered without inspection

APPLICATION: Suspension of deportation

In a decision dated December 1, 1997, the Immigration Judge found the respondent deportable as charged, denied her application for suspension of deportation, but granted the request for voluntary departure in lieu of deportation. The respondent appeals the denial of suspension of deportation under section 244(a) of the Immigration and Nationality Act, 8 U.S.C. § 1254(a). The request for oral argument is denied. *See* 8 C.F.R. § 1003.1(e). The appeal will be sustained.

Section 244(a) of the Act provides an extraordinary form of relief not intended by Congress as a means of suspending deportation for most aliens who find themselves in deportation proceedings. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Matter of O-J-O-*, 21 I&N Dec. 381 (BIA 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996); *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). In order to qualify for this relief, the respondent must establish that he or she has been physically present in the United States for a continuous period of at least 7 years, that he or she has been a person of good moral character during such period, and that deportation would result in extreme hardship to himself or herself or to a spouse, parent, or child who is a citizen or lawful permanent resident of the United States. *See* section 244(a)(1) of the Act. Pursuant to section 244(a)(3), suspension of deportation may be granted to an alien who has been physically present in the United States for a continuous period of not less than 3 years immediately preceding application; has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident; and proves that during all such time in the United States the alien was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's parent or child.

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The Immigration Judge determined that because the respondent entered the United States in 1985, she met both the 3 year requirement of continuous physical presence under section 244(a)(3)(battered spouse provision) as well as the 7 year requirement under section 244(a)(1). She further concluded that the respondent had established good moral character for the requisite period. *See* I.J. at 3, 46. Nevertheless, she found that the respondent failed to provide credible testimony in support of her claim and thus, failed to establish extreme hardship to either herself or a qualifying relative (I.J. at 33, 46).

We agree with the Immigration Judge's determination regarding physical presence and good moral character. However, we do not agree that the respondent failed to provide credible testimony in support of her claim. In general, an Immigration Judge's credibility assessment will be given significant deference because he or she is in the best position to observe a witness' demeanor. *See, e.g., Turcios v. INS*, 821 F.2d 1396, 1399 (9th Cir. 1987); *Sarvia-Quintanilla v. INS*, 767 F.2d 1387, 1395 (9th Cir. 1985); *Matter of Teng*, 15 I&N Dec. 516, 518 (BIA 1975). However, we do not find that we can affirm the Immigration Judge's finding in this case under the rigorous Ninth Circuit standards for review of adverse credibility determinations. *See Kataria v. INS*, 232 F.3d 1107 (9th Cir. 2000); *Salaam v. INS*, 229 F.3d 1234 (9th Cir. 2000); *Shah v. INS*, 220 F.3d 1062 (9th Cir. 2000); *Ladha v. INS*, 215 F.3d 889 (9th Cir. 2000); *Lopez-Reyes v. INS*, 79 F.3d 908 (9th Cir. 1996); *see also Abovian v. INS, 219 F.3d 972* (9th Cir. 2000), *reh'g denied*, 257 F.3d 971 (9th Cir. 2001); *Yazitchian v. INS*, 207 F.3d 1164 (9th Cir. 2000). In this regard, we cannot find that the referenced matters pertaining to inconsistencies and lack of detail including whether the respondent was abused by her father and confusion surrounding dates of alleged abuse by the stepson to go to the heart of the respondent's suspension claim and, thus, they are of insufficient probative value to impeach the respondent's overall credibility. *See e.g. Bandari v. INS*, 227 F.3d 1160 (9th Cir. 2000); *Shah v. INS, supra at* 1068. Nor, can we find an adequate basis for an adverse credibility finding based on the plausibility of the respondent having failed to report the sexual abuse of her son to police when she had previously reported the physical abuse by her husband. The respondent's testimony regarding her experiences while married to her lawful permanent resident husband was largely consistent with her written application for suspension of deportation (Exh. 2). Thus, in the absence of any additional evidence to impugn the respondent's veracity, under Ninth Circuit case law, we must accept the truth of the respondent's testimony during her merits hearing.

Turning to the question of extreme hardship, we note that the elements to establish extreme hardship are dependent upon the facts and circumstances of each case. *See Saldana v. INS*, 762 F.2d 824, 827 (9th Cir. 1985); *Matter of Pilch, supra.* While any particular fact or circumstance by itself may be insufficient to constitute extreme hardship, multiple factors considered cumulatively may constitute hardship that is sufficiently unusual to be extreme. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam). Additionally, the Court of Appeals for the Ninth Circuit, within whose jurisdiction this matter arises, has consistently required careful assessment of the impact that deportation would have on children and families, and has asked us to give "considerable, if not predominant, weight" to the hardship that will result from family separation. *See Salcido-Salcido v. INS, supra*, at 1293; *Matter of Pilch, supra*, at 632. Additionally, when evaluating extreme hardship to a United States citizen child, the Ninth Circuit requires that we consider the possibility that the child will not accompany his parent upon deportation and the extreme hardship that might result from such a separation. *See Cerrillo-Perez v. INS*, 809 F.2d 1419, 1425-26 (9th Cir. 1987).

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Having reviewed the record, we conclude that the respondent has established extreme hardship to herself and her United States citizen children, now 16 and 15 years old. The respondent entered the United States in December 1985 when she was 18 years old, and resided in this country continuously since then. *See Matter of Lum*, 11 I&N Dec. 295 (BIA 1965) (concluding that a respondent's 13-year residence in United States constituted equitable consideration in adjudication of suspension of deportation application). The record further reflects that she suffers from Post Traumatic Stress disorder as a consequence of her abusive relationship with her former husband. *See* Exh. 2A. Although the respondent's parental history is shown to be somewhat questionable, we note that her parental behavior was only placed into question while she was with her former husband and under his influence and subject to his abuse. Indeed, upon separating from him in 1994, she has provided a safe, nurturing environment for her children. She is employed and her children are in school and are shown to be thriving. The record reflects that the respondent is active in her church and has developed a significant support network (Exh 3). In view of these circumstances, we conclude that the respondent's lapse in parental judgment as documented within the record is attributable to her abusive relationship with her former husband and that she has since demonstrated that she is not an unfit parent. Moreover, the potential change in the respondent's role as the sole caretaker for her close-knit family in the United States, to a situation of uncertainty and relative solitude in Mexico is an important factor in measuring the total hardship in this case. Although she has family in Mexico, as noted, she reported that her father was abusive to her and her relationship with her siblings is essentially nonexistent and thus it is unlikely that they might provide any support (Tr. 20-26, 100). Furthermore, if the children were to accompany her to Mexico, the record reflects that both have spent the majority of their lives in the United States, they are fluent in English and that it would be extremely difficult to acclimate to the new environment. In addition, the respondent's daughter was noted to have difficulty with adapting to change at the time of the merits hearing (Tr. at 97-98, Exh. 3). We recognize that after such a lengthy stay in the United States, the respondent and her children would suffer significant difficulty in readjusting to life in Mexico. Likewise, we observe that the children have relied on the respondent to care for them, entirely by herself, for almost their entire lives. Thus, their separation from her, if such would occur, would clearly cause significant hardship to them.

Considering these factors cumulatively, we conclude that the respondent's deportation would result in extreme hardship to the respondent and her children. Accordingly, the following orders shall be entered.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The order of the Immigration Judge, dated December 1, 1997, is vacated.

FURTHER ORDER: The respondent's application for suspension of deportation is granted and deportation is suspended.

FOR THE BOARD