U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

DAVID L. WILSON, ESQUIRE
3019 Minnehaha Avenue, Suite 200
Minneapolis, MN 55406-0000

Office of the Chief Counsel/BLM
2901 Metro Drive, Suite 100
Bloomington, MN 55425

Name: SALEHEEN, TABASSUM

A097-967-736

Date of this notice: 7/20/2009

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:
Cole, Patricia A.
Greer, Anne J.
Pauley, Roger

File: A097 967 736 - Bloomington, MN Date: JUL 20 2009

In re: TABASSUM SALEHEEN a.k.a. Tabassum Ahwal Saleheen
a.k.a. Tabassum Ahwal Quadir

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David L. Wilson, Esquire

ON BEHALF OF DHS: Amy K.R. Zaske
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law

APPLICATION: Special rule cancellation of removal; voluntary departure

The respondent, a native and citizen of Bangladesh, appeals the Immigration Judge's January 25, 2008, decision denying her application for special rule cancellation of removal for battered spouse or child, pursuant to section 240A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(2)(A). The appeal will be dismissed.

I. FACTUAL AND PROCEDURAL HISTORY

On February 3, 1999, the respondent married Serajus Saleheen in Bangladesh (I.J. at 2). In March 1999, Mr. Saleheen entered the United States in H-1B status, and in August 1999, the respondent joined him (I.J. at 2-3). The respondent testified that between October 1999, and April 2002, Mr. Saleheen subjected her to physical and emotional abuse (I.J. at 3-4).

On May 2002, the respondent and her United States citizen daughter traveled to Bangladesh (I.J. at 4). While in Bangladesh, the Dhaka City Corporation served the respondent with an Affidavit of Divorce at the request of Mr. Saleheen (I.J. at 4-5). Mr. Saleheen remained in the United States and refused to send the respondent her nonimmigrant documents, effectively prohibiting her from re-entering the United States (I.J. at 4-5). The Bengali divorce was finalized some time in 2002 despite attempts by the respondent to challenge the validity of Mr. Saleheen's Affidavit (I.J. at 6; 12). The respondent has not had contact with Mr. Saleheen since her May 2002, trip to Bangladesh, except for a few phone calls (I.J. at 5-6).

On December 12, 2002, the respondent filed a Verified Petition for Dissolution of Marriage with the District Court in Boulder County, Colorado (I.J. at 5). Eventually, on August 28, 2003, she was able to re-enter the United States as a nonimmigrant spouse of a specialty worker (H-4), with authorization to remain in the United States for a temporary period not to exceed August 10, 2004 (I.J. at 5; Exh. 1).

Thereafter, the respondent and Mr. Saleheen engaged in a protracted divorce dispute in Colorado (I.J. at 5). During this time, on January 27, 2005, Mr. Saleheen became a lawful permanent resident. On April 12, 2006, the United States Citizenship and Immigration Services ("USCIS") issued a Notice of Intent to Deny the respondent's application for adjustment of status as the dependent spouse of Mr. Saleheen.[1]

Thereafter, on November 20, 2006, the Department of Homeland Security ("DHS") initiated removal proceedings against the respondent (Exh. 1). The respondent requested relief in the form of special rule cancellation of removal for battered spouse or child, pursuant to section 240A(b)(2)(A) of the Act (Exh. 4). The record reflects that during the pendency of the removal proceedings, on April 9, 2007, the respondent's divorce in Colorado became final (Exh. 5, Tab 2A). Additionally, on September 14, 2007, the respondent married Manzur Quadir in Dakota County, Minnesota (Exh. 5, Tab 3A).

In his decision, the Immigration Judge found that the respondent met her burden of proving that she was subjected to extreme cruelty, but did not demonstrate, as required by the statute, that the battery was committed "by a spouse or parent who is or was a lawful permanent resident." *See* section 240A(b)(2)(A)(i)(II) of the Act.[2] In this regard, the Immigration Judge found that Congress did not intend for section 240A(b)(2)(A) of the Act to extend to situations such as this, where the abusing spouse became a lawful permanent resident after the abuse occurred (I.J. at 11-13). Noting anomalous results that could result if the statute was construed to cover all situations where abuse occurred while the abusing spouse was not in lawful permanent resident status, the Immigration Judge held that section 240A(b)(2)(A)(i)(II) was properly interpreted to mean "that the battering had to take place at a time when the batterer had a status that he could use to hold over the spouse's head in such a way as to limit the spouse's access to Immigration benefits" (I.J. at 11-13). Accordingly, the Immigration Judge denied the respondent's application for special rule cancellation of removal.

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[1] The Notice of Intent to Deny stated that because the Bengali divorce was finalized in September 2002, the respondent was not in a qualifying relationship with Mr. Saleheen at the time of his adjustment, and therefore ineligible to adjust her status as his dependent. The USCIS acknowledged that the District Court of Colorado did not honor the divorce decision entered in Bangladesh. However, the USCIS stated that its practice was to honor marriages and divorces as long as they are legal under the jurisdiction where the act was performed, and that in the respondent's case, the divorce was finalized in Bangladesh in 2002.

[2] The Immigration Judge held that otherwise, the respondent was statutorily eligible for the relief sought (I.J. at 14).

II. ISSUE

The issue presented in this case is whether the language of section 240A(b)(2)(A)(i)(II) of the Act requires that the battery or extreme cruelty be committed while the abusing spouse is a lawful permanent resident or United States citizen. The respondent argues that the language of section 240A(b)(2)(A)(i)(II) of the Act contains no temporal limitations on when the abuse needs to take place, so long as the abuser eventually becomes a lawful permanent resident (or United States citizen). The DHS maintains that the Immigration Judge's interpretation was correct and consistent with Congressional intent.

III. STANDARDS OF REVIEW

This Board must defer to the Immigration Judge's factual findings unless they are clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review questions of law *de novo*. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

IV. ANALYSIS

In conducting our *de novo* review of issues of statutory interpretation, the touchstone of our analysis is the plain language of the statute. *Matter of Briones*, 24 I&N Dec. 355, 361 (BIA 2007); *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) (*citing Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999)). If the terms of the statute constitute a plain expression of congressional intent on their face, then they must be given effect. *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). In ascertaining the plain meaning of a statute, we consider the particular statutory language at issue, its context, and the language and design of the statute as a whole. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 340-41 (1997); *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988).

The statutory language at issue provides:

> The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that –
>
> > (i)(I) the alien has been battered or subjected to extreme cruelty by a spouse or parent who *is or was* a United States citizen (or is the parent of a child of a United States citizen and the child has been battered or subjected to extreme cruelty by such citizen parent);
> >
> > (II) the alien has been battered or subjected to extreme cruelty by a spouse or parent who *is or was* a lawful permanent resident (or is the parent of a child of an alien who *is or was* a lawful permanent resident and the child has been battered or subjected to extreme cruelty by such permanent resident parent) . . .

Section 240A(h)(2)(A) of the Act (emphasis added).

We find that the most straightforward reading of the statutory language is that advanced by the respondent, i.e., that it applies to all aliens whose qualifying spouse is a permanent resident or United States citizen at the time of the application, without regard to whether the spouse acquired the status after the abuse. We do not agree with the Immigration Judge that allowing such aliens to seek special rule cancellation of removal would circumvent the Congressional intent of the statute.

The battered spouse provision at issue was first added to the Act as part of the Violence Against Women Act of 1994 (VAWA 1994), Pub. L. No. 103-322, 108 Stat. 1796 (1994), and has undergone several amendments. Section 240A(b)(2)(A) of the Act was most recently amended by Sec. 1504(a), title V [Battered Immigrant Women Protection Act of 2000], div. B [Violence Against Women Act of 2000], Pub. L. No. 106-386 [Victims of Trafficking and Violence Protection Act of 2000, VTVPA], Act of Oct. 28, 2000, 114 Stat. 1464. When amending the statute, Congress found that "the goal of the immigration protections for battered immigrants included in the Violence Against Women Act of 1994 was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships." Section 1502 of the Battered Immigrant Women Protection Act. In other words, Congress was concerned about modifying the immigration laws to ensure that women did not remain married to their abusive husbands for fear of losing an immigration benefit.

Notably, the Battered Immigrant Women Protection Act expanded relief to aliens whose abuser "is or was" a citizen or lawful permanent resident, and to those battered individuals who intended to be married to their abuser but whose marriages are not legitimate because of their abuser's bigamy. *See* § 1504, Pub. L. No. 106-386, 114 Stat. 1464, 1522-24 (2000). Under prior versions of the statute, relief was only afforded to aliens who had 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. *See* former section 244(a)(3) of the Act, 8 U.S.C. § 1244(a)(3); section 240A(b)(2) of the Act (1997). The VTVPA Conference Report reaffirms that one of the initial purposes of VAWA 1994 was to eliminate immigration laws preventing battered spouses and children from leaving abusive relationships or from seeking help from law enforcement because they were afraid of deportation or that their abuser would withdraw sponsorship for a particular immigration benefit. *See* H.R. Rep. No. 106-939 (2000), at 139-40 (Conf. Rep.). Thus, one of the purposes of the reauthorized version of VAWA is to continue offering protection to groups of battered immigrant spouses and children against domestic violence. *See id.*; 146 Cong. Rec. S8571, S10188, S10195, E1729 (2000).

This sentiment is echoed in the legislative history of the statute. For example, in its Agency Views on the legislation, the Department of Justice indicated that it supported amendments to provisions of the original legislation that "were designed to free battered immigrants from abusers who misused immigration laws to coerce, intimidate, and control their spouses and children." H.R. Rep. No. 106-891, at 46-47 (2000). Similarly, individual senators expressed support for the bill because it would "make it easier for these immigrants and their children to escape abusive relationships," 146 Cong. Rec. S10170 (statement of Sen. Kennedy), and because "battered immigrant women should not have to choose to stay with their abusers in order to stay in the United States." 146 Cong. Rec. S10185 (statement of Sen. Leahy). *See also* 146 Cong. Rec. S10192 (Joint Managers' Statement) (highlighting the bill's effort to remove "obstacles inadvertently interposed

by our immigration laws that may hinder or prevent battered immigrants from fleeing domestic violence safely and prosecuting their abusers").

In light of the foregoing, it is clear that Congress intended to afford broad protection to aliens in abusive relationships. We assume that if Congress had wished to limit special rule cancellation of removal only to those aliens who were abused by legal permanent residents or United States citizens at the time the abuser had such status, it would have done so. Instead, in 2000, it expanded relief to aliens whose abuser "is or was" a citizen or lawful permanent resident.

We read the plain language of the section 240A(b)(2)(A) of the Act as providing eligibility in three distinct situations. In the first situation, the alien is abused by a legal permanent resident or United States citizen, and the abuser retains such status at the time the abused alien makes his or her special rule cancellation of removal application. In the second situation, the alien is abused by a legal permanent resident or United States citizen, but the abuser does not retain such status at the time of the application. Lastly, as in the present case, the statute in plain terms covers a situation where an alien is abused by an individual who is not a legal permanent resident or United States citizen, but who is a legal permanent resident or United States citizen at the time the abused alien seeks relief. While this interpretation may result in relief applications filed many years after an abusive relationship has ended, we see no prohibition under the plain language of the statute that such an application could not be considered by an Immigration Judge, so long as the abuser has acquired status at the time of the application. Indeed, the plain language of the statute *prior to* the 2000 amendments provided for such an application; the 2000 amendments expanded relief to those aliens described in the second situation described above, that is, an aliens whose abuser "was" a United States citizen or lawful permanent resident. Accordingly, we reverse the Immigration Judge's decision that the respondent is statutorily ineligible for special rule cancellation of removal under section 240A(b)(2)(A) of the Act.

The remaining issue is whether the respondent is deserving of special rule cancellation of removal as a matter of discretion. *See* sections 240A(a), (b)(1), (b)(2) of the Act (stating that the Attorney General "may" cancel an alien's removal); *see, e.g., Matter of Sotelo*, 23 I&N Dec. 201, 203 (BIA 2001); *Matter of C-V-T-*, 22 I&N Dec. 7, 10 (BIA 1998); *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978). The respondent has several positive equities weighing in her favor. She has resided in the United States, with the exception of her year in Bangladesh, since 1999. She has a United States citizen daughter, Saneesha, age 8. Notably, the Immigration Judge found that the respondent's removal would cause Saneesha extreme hardship (I.J. at 14). The respondent does not have a criminal record, and has been gainfully employed since May 2004 (Exh. 4). The respondent's negative factors include her ground of removability and her receipt of food stamps from 2004 until 2006.

However, given the relief the respondent is seeking as the battered spouse of a lawful permanent resident, we find that there are additional factors relevant to our consideration. Specifically, we note that the respondent has not had contact with Mr. Saleheen since 2002, except for a few phone calls. The record reflects that the respondent's marriage to Mr. Saleheen ended, for all intents and purposes, in 2002, despite their protracted divorce proceedings. Additionally, the respondent remarried in September 2007. As such, the respondent is no longer dependent on her ex-husband

for status, and is no longer in an abusive relationship with her ex-husband. Thus, given the underlying purpose of the battered spouse provisions of the Act, to enable non-citizens to leave their abusive citizen or permanent resident spouses who may use the threat of deportation or sponsorship of an immigration benefit to maintain control over them, we find that on balance, the respondent has not demonstrated that she is entitled to cancellation of removal under section 240A(b)(2) of the Act as a matter of discretion considering the length of time since the relationship ended, the divorce, and the re-marriage. We therefore will dismiss the respondent's appeal and affirm the grant of voluntary departure.

Accordingly, the following orders are entered.

ORDER: The respondent's appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent is permitted to voluntarily depart the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security ("DHS"). *See* section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b); *see also* 8 C.F.R. §§ 1240.26(c), (f). In the event the respondent fails to voluntarily depart the United States, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If the respondent fails to voluntarily depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty as provided by the regulations and the statute and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Act. *See* section 240B(d) of the Act.

WARNING: If the respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply. *See* Voluntary Departure: Effect of a Motion To Reopen or Reconsider or a Petition for Review, 73 Fed. Reg. 76,927, 76,937-38 (Dec. 18, 2008) (to be codified at 8 C.F.R. §§ 1240.26(c)(3)(iii), (e)(1)).

WARNING: If, prior to departing the United States, the respondent files any judicial challenge to this administratively final order, such as a petition for review pursuant to section 242 of the Act, 8 U.S.C. § 1252, the grant of voluntary departure is automatically terminated, and the alternate order of removal shall immediately take effect. However, if the respondent files a petition for review and then departs the United States within 30 days of such filing, the respondent will not be deemed to have departed under an order of removal if the alien provides to the DHS such evidence of his or her departure that the Immigration and Customs Enforcement Field Office Director of the DHS may require and provides evidence DHS deems sufficient that he or she has remained outside of the United States. The penalties for failure to depart under section 240B(d) of the Act shall not apply

to an alien who files a petition for review, notwithstanding any period of time that he or she remains in the United States while the petition for review is pending. *See* 73 Fed. Reg. at 76,938 (to be codified at 8 C.F.R. § 1240.26(i)).

FOR THE BOARD