



**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

**Saltrese-Miller, Sandra**  
2635 17th St., Suite #2000  
Denver, CO 80211

**Office of the District Counsel/DEN**  
4730 Paris St., Albrook Center  
Denver, CO 80239

**Name: SANCHEZ-LOPEZ, PATRICIA**

**A79-150-628**

**Date of this notice: 5/13/2008**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr  
Chief Clerk

Enclosure

Panel Members:

COLE, PATRICIA A.  
HESS, FRED  
PAULEY, ROGER

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

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File: A79 150 628 - Denver, CO

Date: MAY 13 2008

In re: PATRICIA SANCHEZ-LOPEZ a.k.a. Silvia Patricia Martinez-Cesena

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sandra Saltrese-Miller, Esquire

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ON BEHALF OF DHS: Leila Cronfel  
Assistant Chief Counsel

CHARGE

Notice: Sec. 212(a)(6)(C)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] -  
Fraud or willful misrepresentation of a material fact

APPLICATION: Cancellation of removal; asylum; withholding of removal;  
Convention Against Torture

The respondent, a native and citizen of Nicaragua, appeals from the Immigration Judge's June 19, 2006, decision. In that decision, the Immigration Judge denied the respondent's applications for cancellation of removal under section 240A(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(2), asylum under section 208 of the Act, 8 U.S.C. § 1158, and withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), as well as protection under the Convention Against Torture. The appeal will be sustained, in part, and the record will be remanded to the Immigration Judge for further proceedings consistent with this decision. The respondent's request for oral argument is denied. *See* 8 C.F.R. § 1003.1(e)(7).

On appeal, the respondent argues that the Immigration Judge erred in finding that she failed to demonstrate that she was "battered or subjected to extreme cruelty" by her lawful permanent resident husband as required for cancellation of removal under section 240A(b)(2)(A)(i)(II) of the Act. Additionally, the respondent argues that the Immigration Judge erred in finding that she failed to establish past persecution and a well-founded fear and clear probability of persecution in Nicaragua by her step-father.<sup>1</sup> Finally, the respondent argues that the Immigration Judge erred in

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<sup>1</sup>We note that the Immigration Judge also found that the respondent failed to establish her eligibility for relief based on a claim related to the Sandinistas in Nicaragua and the respondent has not

finding that she failed to meet her burden of establishing eligibility for protection under the Convention Against Torture.

Turning first to the issue of cancellation of removal, we do not agree with the Immigration Judge's finding that the respondent failed to demonstrate that she was "battered or subjected to extreme cruelty" by her husband for purposes of cancellation of removal under section 240A(b)(2)(A)(i)(II) of the Act (I.J. at 5-7). Specifically, we find clear error in the Immigration Judge's finding that the respondent's testimony about her alleged abuse by her husband was not credible. *See* 8 C.F.R. § 1003.1(d)(3)(i). In this regard, the sole basis for the Immigration Judge's adverse credibility finding was the fact that the respondent attempted to enter the United States by fraud (I.J. at 5-6; Tr. at 62-65). We find this to be an insufficient basis to support the Immigration Judge's adverse credibility finding.<sup>2</sup> *See Uanreroro v. Gonzales*, 443 F.3d 1197, 1211 (10th Cir. 2006) (finding that an alien's lies upon entry into the United States do not necessarily forfeit an alien's right to present a credible claim). Thus, contrary to the Immigration Judge, we find that the respondent credibly testified that her husband repeatedly pushed her and hit her in the face and that he threatened to take their child away from her (I.J. at 3; Tr. at 50-57). Moreover, the respondent's friend testified that she witnessed the respondent's husband slap and push the respondent and that she saw bruises on the respondent (I.J. at 5; Tr. at 83-84). Although the respondent failed to submit medical or police reports that were contemporaneous with the alleged abuse, we find that the evidence presented by the respondent, including her credible testimony, is sufficient to meet her burden of establishing that she is a battered spouse for purposes of special rule cancellation of removal. *See* section 240A(b)(2)(D) (providing that, in determining whether an alien is eligible for cancellation of removal under section 240A(b)(2) of the Act, any credible evidence relevant to the application must be considered). Because the Immigration Judge failed to analyze whether the respondent was otherwise eligible for cancellation of removal under section 240A(b)(2) of the Act and did not provide sufficient findings of fact for us to determine whether she is eligible for such relief, the record will be remanded for further proceedings, as appropriate, and for the entry of a new decision. Upon remand, both parties should be afforded the opportunity to present evidence regarding the respondent's eligibility for relief. Since we find it necessary to remand proceedings to the Immigration Judge for the abovementioned reasons, we need not address the respondent's other applications for relief at this time.

Accordingly, the following orders will be entered:

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challenged this finding on appeal.

<sup>2</sup>To the extent that the Immigration Judge expressed disbelief that the respondent would not have commenced divorce proceedings against her husband if she was abused by him, we find this to be impermissible speculation and conjecture (I.J. at 7). *See Uanreroro v. Gonzales, supra*, at 1205 (holding that speculation, conjecture, or unsupported personal opinion does not support an adverse credibility finding) (*quoting Chaib v. Ashcroft*, 397 F.3d 1273, 1278 (10th Cir. 2005)).

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ORDER: The respondent's appeal is sustained, in part.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

  
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FOR THE BOARD