U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: G[redacted], B[redacted] J[redacted] **A [redacted]333**

Date of this notice: 5/29/2014

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.
Kendall-Clark, Molly

TranC
Userteam: Docket

File: [redacted] 333 - Denver, CO

Date: MAY 29 2014

In re: B[redacted] J[redacted] G[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Joy F. Athanasiou, Esquire

ON BEHALF OF DHS: Ivan Gardzelewski
Assistant Chief Counsel

APPLICATION: Cancellation of removal

The respondent, a native and citizen of Trinidad and Tobago, appeals the Immigration Judge's decision of December 19, 2011, denying her application for cancellation of removal under section 240A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(2)(A). The appeal will be sustained. The record will be remanded for background and security checks.

We review for clear error the findings of fact, including the determination 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 their burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii). Because the respondent's application was filed after May 11, 2005 (Exh. 3, Form EOIR-42B), it is governed by the provisions of the REAL ID Act. *Matter of Almanza*, 24 I&N Dec. 771 (BIA 2009).

At issue is whether the respondent established that she was subjected to extreme cruelty by her United States citizen husband sufficient to meet the standard for special rule cancellation of removal for a battered spouse.

We conclude that the respondent is eligible for cancellation of removal. Under section 240A(b)(2)(A) of the Act, cancellation of removal may be granted if the alien demonstrates, inter alia, that she has been "battered or subjected to extreme cruelty" by her United States citizen spouse. The respondent testified that her husband, whom she married in 2002, has never physically abused her (Tr. at 137; Resp. Br. at 2). However, the respondent testified extensively about her husband's alcoholism and gambling addiction, which has led to years of psychological and verbal abuse (Tr. at 126-139). The Immigration Judge concluded that the respondent's husband's actions were best described as "irresponsible," rather than "extremely cruel" (I.J. at 3). We disagree. 8 C.F.R. § 1003.1(d)(3)(ii).

The United States Court of Appeals for the Tenth Circuit, where this case arises, has recognized that a determination of whether particular conduct rises to the level of "extreme cruelty" requires an exercise of discretionary judgment that should be employed on a

case-by-case basis. *See Perales-Cumpean v. Gonzales*, 429 F.3d 977, 983 (10th Cir. 2005) (holding that there is no "hard-and-fast rule to distinguish 'extreme cruelty' from other, less severe, forms of cruel behavior," and thus it is vital to allow for the exercise of agency discretion). In this case, the husband's alcoholism has caused the respondent extreme stress and anxiety. For instance, the respondent testified that her husband's severe alcoholism puts himself and others in danger when he drives, has isolated her socially, and results in an "aggressive" demeanor towards her (Tr. at 126-28). His alcoholism further exacerbates a compulsive gambling habit that often causes him to psychologically abuse the respondent and continually places her welfare at risk (Tr. at 131-33).

We have previously held that Congress intended the Violence Against Women Act ("VAWA") to eliminate immigration laws that prevented battered spouses and children from leaving abusive relationships or from seeking help from law enforcement because they were afraid that they would be deported or that their abusers would withdraw sponsorship for a particular immigration benefit. *See Matter of A- M-*, 25 I&N Dec. 66, 73 (BIA 2009). Thus, a key purpose of the VAWA was to "improve access to immigration relief for groups of battered immigrant spouses and children who were not previously eligible." *Id.* In this case, the Immigration Judge touched briefly upon the respondent's previous attempt to adjust her status based upon a visa petition for immediate relative filed on her behalf by her husband (I.J. at 1-2). However, the respondent provides additional details on appeal, which were unchallenged by the Department of Homeland Security's ("DHS's") reply brief, regarding her husband's failure to support her adjustment of status application due to his alcoholism (Resp. Br. at 2-3).[1]

The husband's actions constitute extreme cruelty. The long-term impact of the husband's alcoholism and gambling addiction on her psychological, emotional, and financial well-being is a compelling testament supporting a grant of her application for cancellation of removal under section 240A(b)(2)(A)(i)(I) of the Act. Nothing before us indicates that the respondent has not otherwise met the statutory requirements for eligibility of cancellation of removal under section 240A(b)(2)(A) of the Act. We further conclude that the record contains sufficient evidence that the respondent merits a discretionary grant of cancellation of removal, including the Immigration Judge's grant of voluntary departure (I.J. at 3). Accordingly, the record will be remanded solely to conduct the necessary background and security checks.

ORDER: The appeal is sustained and the respondent is granted cancellation of removal.

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

[1] The record further supports the respondent's arguments in this regard (*see* Motion to Continue Individual Hearing and Request for Acceptance of Untimely Filing, submitted to the Immigration Court on July 14, 2011).

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 Patricia A. Cole respectfully dissents. I would affirm the Immigration Judge's finding that the respondent has not shown she was subjected to "extreme cruelty" necessary for a grant of cancellation of removal pursuant to section 240A(b)(2)A)(i)(I).