



U.S. Department of Justice

Executive Office for Immigration Review

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Board of Immigration Appeals
Office of the Clerk

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DHS-ICE/District Counsel/BUF
130 Delaware Avenue, Room 203
Buffalo, NY 14202

Name: P [REDACTED] J [REDACTED]

[REDACTED]

Date of this notice: 11/13/2008

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:
Pauley, Roger

epignere

Falls Church, Virginia 22041

File: [REDACTED] - Buffalo, NY

Date:

NOV 13 2003

In re: J [REDACTED] P [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Eric Schultz, Esquire

ON BEHALF OF DHS: [REDACTED]
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: Cancellation of removal

The respondent is a native and citizen of Trinidad and Tobago. The Department of Homeland Security ("DHS") appeals the December 4, 2007, grant of his application for special rule cancellation of removal for battered spouses under section 240A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(2)(A). In an April 4, 2008, order, we denied the DHS's motion to accept its untimely appellate brief. Thus, we consider only the arguments raised in the Notice of Appeal. The appeal is dismissed.

The DHS argues that the Immigration Judge erred in finding the respondent eligible for special rule cancellation of removal because his marriage was not bona fide, as demonstrated by the denial of his application for adjustment of status by the former Immigration and Naturalization Service ("INS"). Although the INS found that the respondent's marriage to a United States citizen was not bona fide and the respondent is now divorced, he is entitled to seek relief in these proceedings based on his marriage. *See* 8 C.F.R. § 1240.8(d). In determining whether the respondent was battered by his United States citizen spouse for cancellation of removal purposes, the Immigration Judge rejected the DHS's claim that his marriage was not bona fide at its inception (I.J. at 5-6) (*citing Matter of Riero*, 24 I&N Dec. 267 (BIA 2007)).¹ Specifically, he found that while the respondent did not provide evidence of shared finances, this is understandable considering his ex-wife's severe drug abuse (I.J. at 6). The respondent submitted 1998 and 1999 tax forms on which he checked "Married but filing separate," and provided his ex-wife's name and Social Security number (I.J. at 6).

¹ The Immigration Judge held that *Matter of Riero* was inapposite because the respondent was not seeking adjustment of status like the alien in that case. Nevertheless, in rejecting the DHS's argument that he entered into his marriage for the purpose of evading the immigration laws, he found that the respondent's marriage was meritorious in fact even under *Matter of Riero*.

Furthermore, he offered credible testimony regarding the bona fides of his marriage that the DHS failed to rebut (I.J. at 6; Tr. at 31-35). Along these lines, the Immigration Judge found that his ex-wife misrepresented her testimony during their INS interview in an attempt to blackmail the respondent into giving her drug money (I.J. at 6; Tr. at 34-39). In the absence of argument on this subject, we find no clear error in the factual findings concerning the bona fides of the respondent's marriage. See 8 C.F.R. § 1003.1(d)(3)(i) (the Board must defer to an Immigration Judge's factual findings, unless they are clearly erroneous); see also *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564 (1985) (holding that where there are two permissible views of the evidence, the factfinder's choice between them cannot be deemed clearly erroneous); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). Therefore, we find no reversible error in the holding that the respondent's marriage was bona fide at its inception.

The DHS further argues that the Immigration Judge erred in concluding that the respondent's former United States citizen spouse battered him or subjected him to extreme cruelty. We disagree. The Immigration Judge found that the respondent credibly testified that his ex-wife slapped him about the face, and hit him with a closed fist, a book and a television remote (I.J. at 6; Tr. at 42, 78). In addition, she entered into an adulterous relationship in close proximity to his home, causing him great embarrassment in their community (I.J. at 6-7; Tr. at 46-48). Furthermore, he suffered emotional trauma when returning from work numerous times to find his wife and others using crack-cocaine and marijuana in the marital home (I.J. at 7; Tr. at 40-43). The respondent submitted notarized affidavits of community members corroborating his ex-wife's abusive nature and propensity for drug abuse (I.J. at 6; Respondent's Exhs. G and H). The DHS has not argued that these fact-findings are clearly erroneous. See 8 C.F.R. § 1003.1(d)(3)(i); *Anderson, supra*; *Matter of S-H-, supra*. Thus, we find no reversible error in holding that the respondent is eligible for special rule cancellation of removal because he was battered and subjected to extreme cruelty by his ex-wife.

Lastly, the DHS has identified no adverse factors that would warrant the denial of this application in the exercise of discretion. The DHS further has identified no error in the holding that the respondent's removal would result in extreme hardship to himself or a family member (I.J. at 7). The respondent is 45 years old, he has been living in the United States for 13 years, he has significant financial ties here, and his son requires medical treatment for a gunshot wound to the head (I.J. at 7; Tr. at 17, 26, 29-31, 52-59; Respondent's Exhs. B-D).

Accordingly, the following orders are entered.

ORDER: The appeal is dismissed.

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