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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [redacted] Date: NOV 18 1999

In re: [redacted] D -- C

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Moira Fisher, Esquire
Florida Immigrant Advocacy Center, Inc.
3000 Biscayne Boulevard, 4th Floor
Miami, Florida 33137

ON BEHALF OF SERVICE: Sylvia H. Alonso
Assistant District Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

Lodged: Sec. 237(a)(2)(E)(i), I&N Act [8 U.S.C. § 1227(a)(2)(E)(i)] - Convicted of crime of domestic violence, stalking, or child abuse, neglect, or abandonment[1]

The respondent appeals from the Immigration Judge's decision dated April 29, 1998, finding her inadmissible under section 212(a)(6)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(A)(i), denying her application for cancellation of removal under section 240A(b)(2) of the Act, 8 U.S.C. § 1229b(b)(2), and ordering her removed and deported. The respondent appeals from the denial of her application for cancellation of removal. The respondent's request for waiver of the appeal fee is granted. See 8 C.F.R. § 3.8(c). This case was orally argued before the Board in Miami, Florida, on February 24, 1999.[2] The appeal will be dismissed.

[1] The lodged charge under section 237(a)(2)(E)(i) of the Act was withdrawn by the Immigration and Naturalization Service on March 4, 1998.

[2] We acknowledge with appreciation the amicus brief submitted by the National Immigration Project of the National Lawyers Guild.

[redacted]

The Facts

The respondent is a 41-year-old [illegible] admitted the truth of the facts contained in the Notice to Appear and the charge [illegible] A)(i) of the Immigration and Nationality [illegible]

In 1986, the respondent entered the United States without inspection in order to live with her boyfriend, [redacted] also a native and citizen of Mexico, in Chicago, Illinois. In 1989, the respondent gave birth to her United States citizen child, [redacted] Mr. [redacted] was the child's father.

In 1991, Mr. [redacted] left the respondent. In 1994, the respondent married her present husband, [redacted] a lawful permanent resident of the United States. They moved to [redacted] Ohio, in 1995 and to [redacted] Florida, in 1996. The respondent's husband was first arrested in [redacted] Ohio, for domestic violence based on the respondent's complaint that he pulled her hair during an altercation in December 1995. He pled guilty to an amended charge of disorderly conduct, misdemeanor level four. He was sentenced to 30 days imprisonment and fined $75 and court costs. Also, on December 20, 1996, Mr. [redacted] was convicted of battery against the respondent in [redacted] Florida, and sentenced to 1 year [illegible] evaluation and treatment for domestic violence, and barred from [illegible] the respondent.

The respondent testified that she and her daughter attended church as Jehovah's Witnesses (Tr. at 52). She also contributed to children in Africa. The respondent indicated that her parents are retired and she did not know whether she could live with them in Mexico. [redacted]'s father left the United States and is probably living in Mexico. The respondent believes that the father has no interest in [redacted] and he has not supported the child (Tr. at 60, 101).

The respondent also presented the testimony of [redacted] [redacted] in [redacted] Florida, as an expert witness in t[illegible]mestic violence. According to Ms. [redacted] the respondent exhibited a classic case of [illegible]ing been battered by her husband (Tr. at 133).

The Immigration Judge's Decision

The Immigration Judge found that the respondent had been battered and had been physically present in the United States for 3 years immediately preceding the date of her application. However, he also found that the respondent lacked good moral character and had failed to establish that she or her United States citizen child would experience extreme hardship if the respondent returns to

[redacted]

Mexico. He also denied the application in the exercise of discretion

The Respondent's Appeal

The respondent has raised a number of issues concerning the Immigration Judge's denial of her application for cancellation of removal under section 240A(b)(2) of the Act.[3] The respondent contends that the Immigration Judge erred in finding that she failed to establish that her removal from the United States would result in exceptional and extremely unusual hardship to herself or her United States citizen child. She also contends that the Immigration Judge was biased against her.

Analysis

Section 240A(b)(2) of the Act is available to an alien who has been battered or subjected to extreme cruelty in the United States by a spouse who is a United States citizen or lawful permanent resident, has been physically present in the United States for 3 years immediately preceding the date of such application, who has been a person of good moral character, is not inadmissible under paragraphs (2) or (3) of section 212(a), is not deportable under paragraphs (1) or (2) through (4) of section 237(a) and has not been convicted of an aggravated felony, and establishes that removal would result in extreme hardship to the alien or her child. The application under section 240A(b)(2) of the Act may be denied in the exercise of discretion.

As a preliminary matter, we first consider the respondent's contention that the Immigration Judge was biased against her. As stated infra, we find that the Immigration Judge did make inappropriate comments concerning aspects of the respondent's application for cancellation of removal, we have conducted a de novo review of the record in this case. Matter of Fuentes, 19 I&N Dec. 1370 (11th Cir. 1994); Matter of Vilanova-Gonzalez, 19 I&N Dec. 699 (BIA 1988); 8 C.F.R. § 3.1(d).

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[3] The Immigration Judge found that the respondent was not eligible to apply for cancellation of removal because she failed to depart from the United States upon the expiration of the time provided in a voluntary departure notice that was served on her in November 1995. However, the Immigration and Naturalization Service during oral argument conceded that due to a typographical error on the face of the voluntary departure document, and in the interests of justice, the Immigration Judge erred in his finding that the respondent's application for cancellation of removal was pretermitted. In light of the Service's concession, we consider that the respondent was eligible to apply for cancellation of removal.

[redacted]

However, we do not find that the Immigration Judge prevented the respondent from receiving a full and fair hearing. The respondent contends that the Immigration Judge categorically refused to accept any evidence on the dynamics of domestic violence, or to consider this as a factor in evaluating the application for cancellation of removal. However, the Immigration Judge did admit evidence regarding domestic abuse into the record, including the testimony of Ms. [redacted] and other documentary evidence. See I.J. at 10-11. Moreover, we do not find that the respondent has established that she was substantially prejudiced by the Immigration Judge's conduct or rulings. See Mullen-Cofee v. INS, 976 F.2d 1375, 1380 (11th Cir. 1992); Ibrahim v. INS, 821 F.2d 1547, 1550 (11th Cir. 1987); Matter of Y-G-, 20 I&N Dec. 794, 798 (BIA 1994); Matter of Santos, 19 I&N Dec. 105 (BIA 1984).

The first issue involves the finding by the Immigration Judge that the respondent lacked good moral character. The Immigration Judge noted that on February 13, 1997, the respondent was convicted of Driving Under the Influence - Impairment, and ordered to pay a $250 fine, her license was suspended for 6 months, she was ordered to perform 50 hours of community service, and she was placed on probation for a period of 1 year. On June 3, 1997, a warrant for the respondent's arrest was issued based on violations of her probation. On September 8, 1997, the respondent was convicted of a violation of probation and sentenced to 45 days, with termination of her probation. On the same day the respondent was convicted of battery and sentenced to 60 days imprisonment, and contempt of court and sentenced to an additional 5 days.

The Immigration Judge placed great importance on the respondent's conviction for driving while under the influence and her conviction for battery against her husband. The Immigration Judge wrote:

> [The respondent] has shown herself to be an individual with blatant disregard for this countries' laws. Clearly, these crimes indicate to the Court that this is not an individual who is a person of "good moral character," or a victim of domestic violence who merits consideration for this "special rule" for cancellation of removal.

The Immigration Judge also noted that the respondent purchased a false social security card for $750 which was used to obtain unauthorized employment, and she also received food stamps while employed.

Moral turpitude refers generally to conduct which is inherently base, vile, or depraved, contrary to the accepted rules of morality and the duties owed between persons or to society in general. Matter of Franklin, 20 I&N Dec. 867 (BIA 1994), aff'd, 72 F.3d 571 (8th Cir. 1995); Matter of Danesh, 19 I&N Dec. 669 (BIA 1988); see also Matter of Flores, 17 I&N Dec. 225, 227 (BIA 1980); Matter of McNaughton, 16 I&N Dec. 569 (BIA 1978); Matter of Baker, 15 I&N Dec. 50 (BIA 1974); Matter of S-, 2 I&N Dec. 353 (BIA, A.G. 1945); Matter of G-, 1 I&N Dec. 73 (BIA, A.G. 1941). Matter of Turcotte, 12 I&N Dec. 206 (BIA 1967). One conviction for simple assault is not a crime involving moral turpitude. Matter of Fualaau, Interim Decision 3285 (BIA 1996) (assault in the third degree under Hawaii criminal statute not a crime involving moral turpitude); Matter of

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Perez-Contreras, 20 I&N Dec. 615 (BIA 1992). Compare, Matter of Tran, Interim Decision 3271 (BIA 1996) (willful infliction of corporal injury on a spouse, in violation of the California Penal Code, constitutes a crime involving moral turpitude).

The cumulative nature of the respondent's criminal record could indicate a lack of good moral character and the respondent's offense of driving while under the influence is a serious offense. See e.g., Matter of Magallanes, Interim Decision 3341 (BIA 1998). Compare, Villanueva-Franco v. INS, 802 F.2d 327 (9th Cir. 1986) (extensive criminal record). However, the catch-all provision under section 101(f) of the Act, 8 U.S.C. § 1101(f) is discretionary in nature and all factors must be weighed to arrive at a conclusion that an alien lacks good moral character. See, e.g. Torres-Guzman v. INS, 804 F.2d 531, 533 (9th Cir. 1986).

The respondent, in her brief and at oral argument, points out that the Immigration Judge appeared to blame the "special rule" provisions under the Violence Against Women Act (VAWA) which precluded the respondent's husband's presence at the removal proceedings for the impediment of "the development of evidence concerning the good moral character of V2 [the respondent]" (I.J. Dec. at 21). The Immigration Judge also referred to the respondent's husband as "Victim 1 or V1" and the respondent as "Victim 2 or V2" throughout his decision.

We agree with the respondent that it was inappropriate for the Immigration Judge to apparently penalize the respondent for the limitations concerning evidence in the VAWA. Moreover, it was also inappropriate for the Immigration Judge to refer to the respondent's husband as "V1" and the respondent as "V2", thereby implicitly assigning the same status to the respondent and her husband. As the respondent writes in her brief, she was never arrested until 1997, and it seems that her criminal record is intertwined with the problems she experienced with her husband. The Immigration and Naturalization Service regulations concerning good moral character direct that "extenuating circumstances may be taken into account" if the alien has not been convicted of a disqualifying crime. See 8 C.F.R. § 204.2(c)(1)(vii). Moreover, in enacting the VAWA's immigration provisions, Congress extended its efforts to aid battered alien spouses and prevent manipulation of the immigration laws by abusers.[4]

We find that the Immigration Judge erred in failing to consider the abuse that the respondent experienced in relation to the offenses that she committed. We also do not find that the respondent's offenses, which were committed during the time that she was the victim of abuse, are sufficient to establish that she lacks good moral character. We next turn to the issue of whether the respondent has established the element of extreme hardship under section 240A(b)(2) of the Act.

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[4] See section 204(a)(1)(A)(iii)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I), which permits a battered alien spouse to self-petition for lawful permanent resident status. Unlike waivers found elsewhere in the Act, the self-petition and cancellation of removal provisions do not require any participation on the part of the allegedly abusive spouse.

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In determining whether extreme hardship exists, all relevant factors must be considered, including the age and health of the alien and of her family; her family ties in the United States and abroad; her length of residence in the United States; the economic and political conditions in the country to which the alien is returnable; the financial status of the alien, including her business and occupation; the possibility of other means of adjustment of status; and her immigration history. See Matter of O-J-O-, Interim Decision 3280 (BIA 1996); Matter of Anderson, 16 I&N Dec. 596 (BIA 1978). It has further been held that although these factors provide a framework for analysis, the elements required to establish extreme hardship are dependent upon the facts and circumstances peculiar to each case, and that relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. Matter of O-J-O-, supra.

The fact that an alien has a United States citizen child does not of itself justify suspension of deportation, and an alien residing here unlawfully does not gain a favored status by the birth of a child in this country. Matter of Pilch, Interim Decision 3298 (BIA 1996); see Diaz-Salazar v. INS, 700 F.2d 1156 (7th Cir.), cert. denied, 462 U.S. 1132 (1983); Marquez-Medina v. INS, 765 F.2d 673 (7th Cir. 1985). Furthermore, although economic factors are relevant in any analysis of extreme hardship, economic detriment alone is insufficient to support a finding of extreme hardship within the meaning of section 244(a) of the Act. Palmer v. INS, 4 F.3d 482, 488 (7th Cir. 1993); Matter of Pilch, supra, at 6. Additionally, the mere loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not constitute extreme hardship. See Marquez-Medina v. INS, supra; Matter of Pilch, supra, at 6.

Subsequent to the oral argument, we note that recent Interim Regulations have been promulgated to implement section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA).[5] Several of the regulations are applicable to the case at hand.[6] Under section 240.58(c)[7] the following factors should be considered when making a determination of extreme

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[5] See Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries, 64 Fed. Reg. 27,856, 27875 (Dep't. of Justice, 1999) (to be codified at 8 C.F.R. pt. 240).

[6] The respondent, a native and citizen of Mexico, is not a NACARA beneficiary, and is therefore not entitled to a rebuttable presumption that she has established extreme hardship. See §§ 240.61(a)(1) or (a)(2) and 240.64(d). See 64 Fed. Reg. 27876, 27878 (1999). Moreover, the respondent has the burden of proof to establish by a preponderance of the evidence that she is eligible for special rule cancellation of removal. § 240.64(a). See 64 Fed. Reg. 27877 (1999).

[7] For cases under section 240A(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(2), extreme hardship shall be determined as set forth in § 240.58 of the regulations. See § 240.20. See 64 Fed. Reg. 27875-76 (1999).

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hardship under section 240A(b)(2) of the Act:

> (1) The nature and extent of the physical or psychological consequences of abuse;
>
> (2) The impact of loss of access to the United States courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions or court orders regarding child support, maintenance, child custody, and visitation);
>
> (3) The likelihood that the batterer's family, friends, or others acting on behalf of the batterer in the home country would physically or psychologically harm the applicant or the applicant's child(ren);
>
> (4) The applicant's needs and/or needs of the applicant's child(ren) for social, medical, mental health or other supportive services for victims of domestic violence that are unavailable or not reasonably accessible in the home country;
>
> (5) The existence of laws and social practices in the home country that punish the applicant or the applicant's child(ren) because they have been victims of domestic violence or have taken steps to leave an abusive household; and
>
> (6) The abuser's ability to travel to the home country and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's children from future abuse.[8]

We have considered the factors set out under § 240.58(b) and (c) find that the respondent has failed to establish that she would experience extreme hardship if she were forced to return to Mexico.

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[8] The above listed factors are to be considered "in addition to, or in lieu of," the factors listed in paragraph (b) of § 240.58. Fourteen factors are listed under paragraph (b): (1) the alien's age; (2) age, number and immigration status of an alien's children, their ability to speak the native language and to adjust to life in the country of return; (3) the health of the alien and children and availability of any required medical treatment in the country to which the alien would be returned; (4) the alien's ability to obtain employment in the country to which the alien would be returned; (5) length of residence in the United States; (6) the existence of other family members who legally reside in the United States; (7) the financial impact of the alien's departure; (8) the impact of a disruption of educational opportunities; (9) the psychological impact of the alien's deportation; (10) the current political and economic conditions in the country to which the alien is to be returned; (11) family and other ties to the country to which the alien would be returned; (12) contributions to and ties to a community in the United States, including the degree of integration into society; (13) immigration history, including authorized residence in the United States; and (14) the availability of other means of adjusting to permanent residence status. See 64 Fed. Reg. 27875-76 (1999).

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The respondent resided in Mexico until she entered the United States without inspection or admittance in 1986 when she was 29 years of age. The respondent, therefore, has spent a substantial part of her life in Mexico. While the respondent has resided in this country for approximately 12 and 1/2 years, she speaks Spanish, and has at least some connections to her native country from her childhood. She owns no property here and has few community ties beyond those resulting from attendance at church and some church activities. The respondent is in good health and has no family ties in the United States since she has indicated that her United States citizen child would be returning to Mexico with her. We also find that the respondent has not assimilated into American culture to the extent that deportation would constitute extreme hardship within the meaning of the Act. Matter of Pilch, supra; Matter of O-J-O-, supra.

Additionally, the respondent has parents who reside in Mexico. The respondent indicates that her parents are retired and are not doing well economically (Tr. at 58). However, the respondent's parents could possibly offer her some support as she readjusts to life in Mexico. The respondent also contends that she would have difficulty finding employment in Mexico. However, we note that the respondent's employment history in the United States is sparse and there is no evidence that she could not obtain some type of employment in Mexico. While it may be true that the respondent will face economic hardship in Mexico, this alone does not amount to extreme hardship within the meaning of the Act. Matter of Anderson, supra, at 598 (noting that economic conditions in an alien's homeland alone do not justify a grant of relief unless other factors such as advanced age, severe illness, family ties, etc., combine to make deportation an extreme hardship). Even a significant reduction in the standard of living is not by itself a ground for relief. See, e.g., Ramirez-Durazo v. INS, 794 F.2d 491, 498 (9th Cir. 1986). The respondent's claim of difficulty in finding employment in Mexico, although relevant, is not sufficient to support a grant of relief in the absence of other substantial equities, which do not appear to exist here. See Hernandez-Patino v. INS, 831 F.2d 750 (7th Cir. 1987); Santana-Figueroa v. INS, 644 F.2d 1354 (9th Cir. 1981); Matter of Anderson, supra.

On appeal, the respondent contends that the Immigration Judge failed to consider her abusive relationship in the context of extreme hardship. The respondent contends that there are two significant hardships that the Immigration Judge did not consider. First, the respondent contends that her daughter witnessed numerous incidents wherein the respondent was beaten by her husband (the daughter's step-father), and her daughter was the victim of an attempted sexual assault while the daughter was alone with the step-father. The respondent indicates that her daughter will likely need counseling to deal with these incidents. The respondent indicates that her daughter would have access to such counseling in Florida, but not in Mexico. The respondent, however, has presented no evidence that her daughter is currently receiving counseling or that she could not receive counseling in Mexico if she does need it in the future. The respondent's concern, therefore, is speculative.

The respondent also contends that she would lack access to the courts for civil protection orders and assistance from the police. Also, the respondent's husband is a citizen of Mexico and there would be nothing to prevent him from returning to Mexico to find her there. However, the

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respondent presented no evidence that her husband would pursue her in Mexico. The respondent's fear is speculative. In fact, during the proceedings the respondent indicated that her husband was currently living with another woman who apparently considered the respondent's husband to be her "spouse" and who had become pregnant by him (Tr. at 118). There is also no evidence that the authorities in Mexico could not protect her if the need arose.

We also do not find that the respondent's United States citizen child would experience extreme hardship if she returns with the respondent to Mexico. We find that, although there may be some hardship to the respondent's child in the event of the respondent's deportation, we do not find that it would rise to the level of extreme hardship as required under section 240A(b)(2) of the Act. Even though the child may face difficulties adjusting to life in her mother's homeland, these problems do not materially differ from those encountered by other children who relocate with their parents, especially at a young age. Matter of Pilch, supra. The fact that economic and educational opportunities for children are better in the United States than in the alien's homeland does not establish extreme hardship. Matter of Kim, 15 I&N Dec. 88 (BIA 1974); see also Ramirez-Durazo v. INS, supra (stating that the disadvantage of reduced educational opportunities is insufficient to constitute extreme hardship). Furthermore, no evidence of particular health problems for the child was introduced and no evidence was presented that the child would remain in the United States without her mother. See Matter of Ige, 20 I&N Dec. 880 (BIA 1994). We also note that the respondent's child speaks Spanish. Overall, we are unpersuaded by the evidence of record that the respondent's United States citizen child would suffer unique or severe hardship if she were to depart the United States with the respondent. Matter of Pilch, supra.

Conclusion

We find, for the foregoing reasons, that the respondent has failed to show, either individually or cumulatively, factors that demonstrate extreme hardship to herself or to her United States citizen child.

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Edward R. Grant

FOR THE BOARD

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [redacted]

Date: NOV 18 1999

In re: [redacted]

DISSENTING OPINION: Paul W. Schmidt, Chairman

I respectfully dissent.

The respondent, a battered spouse, has demonstrated that her deportation to Mexico will result in extreme hardship to her and to her nine-year-old United States citizen daughter. I would grant her application for suspension of deportation in the exercise of discretion.

I agree with the following aspects of the majority's opinion: 1) that the respondent meets the physical presence and good moral character requirements for cancellation of removal as a battered spouse; 2) that it was inappropriate for the Immigration Judge to penalize the respondent for limitations concerning evidence in the Violence Against Women Act (VAWA); 3) that the Immigration Judge inappropriately characterized the respondent and her husband as "V2" and "V1," respectively, during the hearing; and 4) that the Immigration Judge erred in failing to consider the abuse that the respondent experienced in relation to the offenses that she committed.

I do not join the majority's finding that the Immigration Judge did not prevent the respondent from receiving a full and fair hearing. I do accept, however, counsel's statement during oral argument that all of the evidence and all of the testimony necessary for us to decide this case on the merits, on de novo review, is contained in the record and that we should, accordingly, decide the case.

I strongly disagree with the majority's conclusion that extreme hardship to the respondent and her citizen daughter has not been established.

I. STANDARDS FOR EXTREME HARDSHIP IN BATTERED SPOUSE CASES

Matter of O-J-O-, Interim Decision 3280 (BIA 1996) describes the general standards for establishing extreme hardship. Those standards are set forth in the majority opinion and need not be repeated.

The O-J-O- factors must be considered in the aggregate, that is, cumulatively. The primacy of O-J-O-, and it's companion case, Matter of L-O-G-, Interim Decision 3281 (BIA 1996), in determining extreme hardship was recently and powerfully affirmed by the Attorney General. Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries, 64 Fed. Reg. 27,856, 27,865 (May 21, 1999)(hereafter cited as "NACARA Suspension Regulations").

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The Attorney General specifically identified a key factor present in this case, lengthy residence in the United States for at least nine years, as one of a number of "strong predictors of extreme hardship." NACARA Suspension Regulations, 64 Fed. Reg. at 27,866. Significantly, the Attorney General did this in the context of a group of suspension applicants for whom Congress had set the minimum period of eligibility at seven years.

By comparison, the respondent is a member of a specially-recognized group of battered spouses for whom Congress has enacted remedial legislation reducing the minimum residence period for eligibility to three years. Therefore, long residence, that is, residence in excess of nine years, should be an even stronger predictive factor for establishing extreme hardship in the respondent's case.

As described by the majority, the regulations also establish a number of special, additional criteria to be used in assessing, in a sensitive and understanding manner, extreme hardship in battered spouse cases. 8 C.F.R. § 240.58 (1999). In the words of our Attorney General, these special regulatory considerations "are part of a broader series of initiatives to protect battered spouses and children within the immigration laws." NACARA Suspension Regulations, 64 Fed. Reg. at 27,864.

We must interpret the laws and regulations related to battered spouses in a flexible, humane manner to provide the necessary protection within the immigration laws. Such treatment also is mandated by our precedent decision in Matter of L-O-G-, supra, at 8, so recently endorsed by the Attorney General.

II. ANALYSIS OF THE RESPONDENT'S EXTREME HARDSHIP CLAIM

The respondent clearly is the victim of domestic abuse, which was witnessed by her young daughter. It also appears that this daughter was a victim of an attempted sexual assault by the respondent's husband.

The evidence of record, including the testimony of the respondent's expert witness (which was largely and improperly ignored by the Immigration Judge), establishes that domestic abuse leaves its victims severely and semi-permanently traumatized. Indeed, the very existence of various special Government regulations and guidelines relating to abused spouses reflects an official recognition that spouse abuse creates a particularly unique and severe trauma for its victims. See, e.g., NACARA Suspension Regulations, 64 Fed. Reg. at 27,864 (discussing and listing the various Service guidelines and policies on spouse abuse cases).

There is little doubt that the trauma suffered by the respondent and her United States citizen daughter continues and that it will be greatly aggravated by the forced removal of the respondent, along with her daughter, to Mexico. Therefore, the extent of the physical and psychological damage in this case is a very significant hardship factor.

It is uncontested that upon removal the respondent and her daughter will lose the protection of the U.S. justice system. The record supports the respondent's assertion that the protections

[redacted]

offered to battered women and their families by the Mexican legal system is both minimal and unpredictable. This further supports the respondent's hardship claim.

Additionally, as recognized by the majority, the respondent's estranged husband is a Mexican citizen. The majority speculates that he has found a new domestic interest in the United States and, therefore, may no longer be interested in the respondent. However, the conduct of spouse abusers is not necessarily predictable. This record does not provide a reasonable assurance that the respondent and her daughter will be free from further abuse in Mexico. By contrast, if such an attack does occur, we have reason to doubt that effective protection will be available to the respondent and her daughter from the Mexican legal system. This also contributes substantially to the hardship.

While the record does not show that the respondent and her daughter are currently receiving therapy or counseling, this factor is hard to assess because the respondent has been in Service custody since August 1997, thus requiring placement of her daughter with a friend. Under these particular circumstances, the fact that neither the respondent nor her daughter are receiving counseling or therapy does not support a finding that such is not required or desirable. On the contrary, the record provides a basis for a reasonable conclusion that the respondent and her daughter may well be in need of special services that will be more readily available in the United States than Mexico, regardless of current feasibility.

The respondent's employment history in the United States is understandably limited, given the pattern of domestic abuse and the fact that she has been in Service custody for the past two years. Nevertheless, there is every reason to believe that her employment prospects in Mexico will be substantially dimmer than in the United States.

The respondent's United States citizen daughter has entered school and now appears to have completed the third grade. Notwithstanding difficult circumstances, she is a good student and appears to be a credit to her community. Certainly, the trauma she has already suffered in her young life will be aggravated, while her future prospects will be substantially diminished, by departure to Mexico. Furthermore, the respondent does not appear to have any realistic prospects of legally immigrating to the United States during her daughter's minority.

Finally, and very significantly, the respondent has resided in the United States for approximately 13 years. This is nearly half again as long as the nine years that the Attorney General has characterized as a "strongly predictor" of extreme hardship, and four times the minimum length of residence specified by Congress for abused spouses seeking suspension of deportation. This long residence strongly supports the respondent's hardship claim.

In summary, the respondent has resided in the United States for the significantly lengthy period of approximately 13 years, which, in the words of the Attorney General, is strongly predictive of extreme hardship. She and her nine-year-old United States citizen daughter have already suffered the severe trauma of domestic abuse. This trauma will be magnified and aggravated by their forced departure to Mexico.

[redacted]

In Mexico, the respondent and her daughter likely will face dismal economic prospects, reduced counseling and educational opportunities, possible renewed threats from the respondent's estranged husband, and a lack of effective protection and assistance from a legal system and a society that are not overly sympathetic to claims from abused women.

The situation of the respondent's United States citizen daughter is of particular concern. Removal to Mexico at this particular point in time seems likely to increase her trauma, promote further maladjustment, and significantly decrease her lifelong prospects for success.

III. CONCLUSION: THIS BATTERED SPOUSE HAS SHOWN EXTREME HARDSHIP

Clearly, the respondent is a battered spouse. When all of the relevant factors are properly evaluated and considered in the aggregate, she has shown that deportation to Mexico will result in extreme hardship to her and to her nine-year-old United States citizen daughter. Consequently, we should grant her application for suspension of deportation in the exercise of discretion.

The Attorney General has endorsed and encouraged a flexible, sensible, humane interpretation of extreme hardship, particularly as it applies to the specially sensitive situation of battered spouses. This interpretation is consistent with the statute, the regulations, and with our own previous precedent decisions in O-J-O- and L-O-G-.

We should take a leadership role in ensuring that the intent of Congress and the Attorney General to provide protection to battered spouses within the immigration law is carried out. This case presents us with a golden opportunity to clearly and effectively refute the obvious hostility to, and highly inappropriate handling of, the respondent's battered spouse suspension claim by the Immigration Judge. Regrettably, the majority endorses a narrow, unnecessarily restrictive application of this remedial provision that is inconsistent with the law and with the Attorney General's humane pronouncements in this important area.

Therefore, I respectfully dissent.

Paul W. Schmidt
Chairman

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

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A [redacted]

Date:

In re: D [redacted] G [redacted]

FEB 22 2000

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Lauren Gilbert, Esquire

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

Lodged: Sec. 237(a)(2)(E)(i), I&N Act [8 U.S.C. § 1227(a)(2)(E)(i)] - Convicted of crime of domestic violence, stalking, or child abuse, neglect, or abandonment

APPLICATION: Reopening

ORDER:

PER CURIAM. This case was last before the Board on November 18, 1999, when we dismissed the respondent's appeal of an Immigration Judge's decision denying her application for cancellation of removal under section 240A(b)(2) of the Act, 8 U.S.C. § 1229b(b)(2), and ordering her removed and deported. On December 28, 1999, the respondent filed a motion to reopen proceedings and remand the matter for a new hearing based on new evidence relating to extreme hardship.

In the motion to reopen, the respondent asserts that she has new and material evidence in support of her application for cancellation of removal which establishes extreme hardship to herself and to her United States citizen child if the respondent is deported to Mexico. The respondent has attached affidavits and other evidentiary documents in support of the motion to reopen. The Immigration and Naturalization Service was served with a copy of the respondent's motion and has not submitted any statement in opposition. In light of the Service's non-opposition, we shall grant the motion.

A[redacted]

In granting the motion to reopen, we make no finding on whether the respondent has met her burden of establishing extreme hardship to herself or to her United States citizen child.

Accordingly, the removal proceedings are reopened, the order of removal and deportation is vacated, and the record is remanded for further proceedings.

FOR THE BOARD