U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Falls Church, Virginia 22041

Mozhdeh Oskoulan
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Office of the District Counsel/HLG
P.O. Box 1711
Harlingen, TX 78551

Name: [redacted]
Riders [redacted]

Date of this notice: 05/11/2007

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:
HESS, FRED

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

Falls Church, Virginia 22041

Files: [redacted] - Harlingen

Date: MAY 11 2007

In re: [redacted]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENTS: Mozhdeh Oskouian, Esquire

ORDER:

PER CURIAM. The respondents move the Board pursuant to 8 C.F.R. § 1003.2 to reopen our decision dated March 12, 2002. We dismissed the respondents' appeal from the Immigration Judge's decision which found them removable, denied their applications for suspension of deportation, but granted them voluntary departure. The motion will be granted.

The respondents have filed a motion to reopen so that they may apply for adjustment of status as the beneficiary of a visa self-petition under section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a United States citizen and as the child of such alien. The respondents also move to reopen for the lead respondent to apply for cancellation of removal under section 240A(b)(2) of the Act, 8 U.S.C. § 1229b(b)(2), as a battered spouse of a United States citizen.

The respondents urge that they are prima facie eligible for such relief and that this matter should be remanded to the Immigration Court. Certain battered spouses are excepted from the ordinary deadlines for the filing of a motion to reopen. Section 240(c)(7)(C)(iv) of the Act, 8 U.S.C. § 1229a(c)(7)(C)(iv). The special rule for battered spouses provides that the motion to reopen should be filed within 1 year of the entry of the final order of removal, except if the alien demonstrates extraordinary circumstances or extreme hardship to the alien's child. Section 240(c)(7)(C)(iv)(III) of the Act.

The final administrative order in this case was entered by the Board on March 12, 2002. The respondents' motion was not filed until January 19, 2007. We find, however, extreme hardship to two of the lead respondent's United States citizen children, [redacted]. The lead respondent was told that they will go into foster care if she is removed to Mexico (Respondent Statement at page 26 of the Motion Exhibits). We also find extraordinary circumstances. The lead respondent's first self-petition was apparently denied in October of 2002, and her second self-petition was approved on September 11, 2006 (Resp. Statement at 26; Approval Notice at page 20 of the Motion Exhibits). The respondents filed their motion to reopen approximately 4 months later, on January 19, 2007.

[redacted]

We find that both respondents have shown prima facie eligibility to apply for adjustment of status and the lead respondent has shown prima facie eligibility to apply for cancellation of removal under section 240A(b)(2) of the Act. [1]

Section 240B(d)(2) of the Act, 8 U.S.C. § 1229c(d)(2), provides, in pertinent part, that the restrictions on relief in paragraph one shall not apply to VAWA relief if the extreme cruelty or battery was at least one central reason for the alien's overstaying the grant of voluntary departure. On March 12, 2002, we granted the respondents 30 days voluntary departure (until April 11, 2002). The lead respondent went to court and got a restraining order and a protection order against the abuser (Resp. Statement at 25). The lead respondent was pregnant with the abuser's child and gave birth on April 14, 2002 (Resp. Statement at 25; Birth Certificate at page 59 of Motion Exhibits). We find that the section 240B(d)(1) bar does not apply in this case.

Finally, we note that the Department of Homeland Security has not filed a response to the respondents' motion.

Accordingly, the motion is *granted*, the proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.

FOR THE BOARD

[1] The lead respondent must file a cancellation application with the Immigration Court at the earliest possible opportunity.