U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: A[redacted]-J[redacted] N[redacted]

N-A-J

[redacted]

Date of this notice: 11/29/2001

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

Very Truly Yours,

Lori Scialabba

Lori Scialabba
Acting Chairman

Enclosure

Panel Members:
HOLMES, DAVID B.
HURWITZ, GERALD S.
VILLAGELIU, GUS

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [redacted] - Seattle

Date: NOV 29 2001

In re: N[redacted] A[redacted] J[redacted]

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Anne E. Benson, Esquire

ON BEHALF OF SERVICE: Robert Peck
Assistant District Counsel

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] - Entered without inspection

APPLICATION: Suspension of deportation

ORDER:

PER CURIAM. We dismiss the Immigration and Naturalization Service's[1] appeal of the Immigration Judge's decision of November 7, 1996, which granted the respondent's application for suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act ("Act"), 8 U.S.C. § 1254(a)(3).[2] We adopt and affirm the decision of the Immigration Judge (I.J. at 1-11). *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994).

The Service has made two principal assignments of error on appeal. First, the Service argues that the respondent's United States citizen child was not "subject to extreme cruelty" by her lawful permanent resident father because he did not intend to harm the child. *See* Service Brief at 6-9. However, the father regularly beat the respondent and threatened her life in their daughter's presence (Tr. at 98-99, 104, 108, 115, 128). He told his daughter [redacted] that he was going to kill her

[1] Hereinafter "Service."

[2] The Service has objected to the appellate submission of the declaration of Dr. [redacted] *Cf.* Amici's Memorandum in Support of Respondent's Reply Brief at Tab 6. Parties should be mindful that the Board does not ordinarily entertain new evidence on appeal. *See, e.g., Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The Board is an appellate body whose function is to review, not to create, a record. *See Matter of Fedorenko*, 19 I & N Dec. 57 (BIA 1984). Accordingly, we sustain the Service's objection to the admission of the declaration of Dr. [redacted] and have not considered it or other new evidence in reaching our decision in this

[redacted]

mother and threatened to kidnap his daughter (Tr. at 73, 99, 109, 111). The respondent obtained court ordered protection for herself and daughters[3] against [redacted] father in April 1995 and had the protection order renewed on October 30, 1996 (Exh. 2 at 135).

Despite [redacted] tender age at the time she observed the beatings, we agree with the Immigration Judge that the repeated physical abuse of the respondent subjected her daughter to extreme cruelty. *See* sections 244(a)(3) and (g) of the Act. The respondent presented the testimony of both a case worker and a licensed counselor which indicated that [redacted] behaved as if she had witnessed extensive violence against her mother by her father, and that she experiences recurring nightmares, flashbacks, and fear that her father will return to kill her mother (Tr. at 34-36, 42, 75-77; Exh. 2 at 49-50). The licensed counselor, who holds a masters degree in social work, believes that [redacted] is suffering from post-traumatic stress disorder ("PTSD") (Tr. at 25, 36-44; Exh. 2 at 143). The Service argues that the Immigration Judge erred by permitting the mental health counselor to testify concerning PTSD. *See* Service Brief at 9. Here, where the counselor was directly responsible for the mental health and well being of the child, and has been trained to treat children who have experienced domestic violence, we do not find that the Immigration Judge erred by permitting her testimony (Tr. at 23-31, 34-61; Exh. 2 at 143-44). The Service has not demonstrated that a diagnosis of post-traumatic stress disorder is outside of the witness's expertise. *Cf.* section 244(g) of the Act. Even if it is, we find that the testimony presented demonstrates that the child's nightmares, flashbacks and fear are related to her father's physical abuse of her mother. *See id.* The plain language of section 244(a)(3) of the Act does not require that the alien establish intent in order to prove extreme cruelty. In this case, we agree that by repeatedly beating the respondent in the presence of her child, the father subjected his daughter to a form of extreme cruelty. *See id.*

Second, the Service argues that the respondent has failed to establish that her deportation would result in extreme hardship to either herself or her United States citizen child. *See* Service Brief at 10-12.[4] We agree with the Immigration Judge's decision that, based on the totality of the circumstances, the respondent has established the requisite extreme hardship (I.J. at 10). *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (recognizing that while one factor by itself may be insufficient to constitute "extreme hardship," that factor, when considered cumulatively with other relevant factors, may constitute hardship that is sufficiently unusual to be "extreme"). The respondent has resided in the United States for 13½ years. The recovery of the respondent and her daughter from the abusive relationship would be jeopardized by her deportation (Ex. 2 at 84; Tr. at 33-48, 67-74, 79-80, 115). In the United States, the respondent has been able to maintain a protection order against [redacted]'s father (Tr. at 113; Exh. 2 at 135-36). However, he has threatened to pursue them if they return to Mexico, and the respondent fears that she would not be able to prevent him from resuming his physical abuse of her in that country (Tr. at 112, 114-15, 117). The State Department has reported that domestic violence in Mexico is widespread, and women do not

[3] The respondent has an older daughter from a previous relationship who was born in Mexico.

[4] The Immigration Judge found that the respondent satisfied the continuous physical presence and good moral character requirements for suspension of deportation under section 244(a)(3) of the Act (I.J. at 2-3, 9). These findings have not been challenged on appeal.

[redacted]

have the same opportunities for protection that exist in the United States (Exh. 2 at 55). The respondent's United States citizen daughter is 9½ years old, and the record does not reflect that she has ever been outside this country. At the time of the last hearing, the respondent's other daughter spoke fluent English and the respondent was taking classes to learn English. While the respondent does not have substantial economic ties to the United States, she works to support herself and her daughters. In light of the evidence of record, we agree with the Immigration Judge that based on the totality of the circumstances, the respondent has established the requisite extreme hardship and merits a grant of suspension of deportation in the exercise of discretion. *See Prapavat v. INS*, 662 F.2d 561, 563 (9th Cir. 1981) (finding abuse of discretion where BIA failed to consider cumulative effect of all relevant factors such as existence of United States citizen children and minimal economic opportunities for suitable employment in an underdeveloped country).

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