File: A75 094 996 - New York City

Date: SEP 28 2000

In re: CARMEN ROCIO CASAS-GARCIA

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jonathan Scop, Esquire

ON BEHALF OF SERVICE: Jeanne Foden-Vencil
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

In a decision dated May 30, 1997, the Immigration Judge found the respondent deportable as charged, denied her applications for suspension of deportation and voluntary departure pursuant to sections 244(a) and 244(e) of the Immigration and Nationality Act, 8 U.S.C. §§ 1254(a), 1254(e), and ordered her deported to Mexico. [1] The respondent has appealed. The appeal will be sustained.

In order to establish eligibility for section 244(a)(1) suspension relief, an alien must prove that he has been physically present in the United States for the 7 years immediately preceding application, that he has been a person of good moral character for the same period, and that his deportation will result in extreme hardship to himself or to his United States citizen or permanent resident spouse, child, or parent.

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1 The alien in the case before us has established the requisite period of continuous physical presence in the United States, and is not subject to the "stop-time rule" of section 309(c)(5) of the Illegal Immigration Reform and Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-627 (IIRIRA), under which certain acts or events work to terminate an alien's period of continuous physical presence. *See* section 203 of the Nicaraguan and Central American Relief Act of 1997, Pub. L. No. 105-100, 111 Stat. 2193, 2196 (NACARA); *see also, Matter of Nolasco*, Interim Decision 3385 (BIA 1999) (service of an Order to Show Cause (Form I-221) ends the period of continuous physical presence required for suspension of deportation under section 244(a) of the Immigration and Nationality Act, 8 U.S.C. § 1254(a).

The Immigration Judge determined that the respondent failed to demonstrate that she had been a person of good moral character for the requisite period of time. In particular, he noted that to obtain employment the respondent executed a Form I-9, attesting under penalty of perjury that she was admitted as a lawful permanent resident alien and that she had a social security number. Consequently, he found that the respondent engaged in a fraudulent misrepresentation for the purpose of obtaining an immigration benefit or entitlement under the Immigration and Nationality Act which she was not entitled to receive, to wit, employment in the United States (I.J. at 3). The Immigration Judge further found that the respondent had established extreme hardship if she were deported to Mexico.

On appeal, the respondent argues that the Immigration Judge erred as a matter of law in finding a lack of good moral character due solely to her use of fraudulent documents to obtain employment. Specifically, the respondent argues that the use of false documents and knowingly signing a form I-9 containing false information is not "false testimony" under section 101(f)(6) of the Immigration and Nationality Act. Furthermore, the respondent contends that such actions are not misrepresentations under section 212(a)(6)(c)(i) of the Act, as claimed by the Service. In response, the Service argues that the Immigration Judge correctly determined that the respondent lacked good moral character for the requisite period of time, and that she failed to establish extreme hardship to herself or to her two United States citizen children if she were deported to Mexico.

After conducting an independent review of the record, we conclude that the respondent has established good moral character. To obtain suspension of deportation, an alien must be of "good moral character"as defined by section 101(f) of the Act, 8 U.S.C. § 1101(f). The Immigration Judge noted that the respondent executed a Form I-9 attesting under penalty of perjury that she was admitted as a permanent resident alien and that she had a social security number. Thus it appears that the Immigration Judge's good moral character finding was based on section 101(f)(6) of the Act. That section sets forth that a finding of good moral character is precluded for "one who has given false testimony for the purpose of obtaining any benefits under this chapter." Section 101(f)(6). The Supreme Court has held that section 101(f)(6) of the Act does not impose a materiality requirement for false testimony, but noted that such testimony "is limited to oral statements made under oath . . . with the subjective intent of obtaining immigration benefits." *Kungys v. United States*, 485 U.S. 759, 780 (1988). If false statements are given orally and under oath, they have been held to constitute false testimony within the meaning of section 101(f)(6) of the Act. *See, e.g., Bernal v. INS*, 154 F.3d 1020 (9th Cir. 1998) (false statements made under oath during a naturalization examination constitute false testimony within the meaning of section 101(f)(6) of the Act); *Matter of R-S-J-*, Interim Decision 3401 (BIA 1999) (false statements under oath to an asylum officer can constitute false testimony for purposes of section 101(f)(6) of the Act); *Matter of Barcenas*, 19 I&N Dec. 609, 612 (BIA 1988) (false statements at deportation hearing); *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (false statement under oath to a border patrol agent). In the instant matter, the respondent did not give false testimony for the purpose of obtaining any immigration benefits. Accordingly, we cannot affirm the finding that the respondent is statutorily barred from establishing

good moral character under section 101(f)(6) of the Act, 8 U.S.C. § 1101(f)(6). We additionally note that convictions for falsely representing oneself as a citizen of the United States have been found not to involve moral turpitude. *See Matter of I-*, 4 I&N Dec. 159 (BIA 1950); *Matter of K-*, 3 I&N Dec. 69, 71 (BIA 1947); *see also Beltran-Resendez v. INS*, 207 F.3d (5th Cir. 2000) (reversing a Board finding that the Immigration Judge correctly determined that a respondent lacked good moral character "because he attested under penalty of perjury that he is an American citizen on his [Employment Eligibility Verification form (Form I-9)])."

The Immigration Judge also concluded that the cumulative effect of the respondent's length of residence in the United States, her extensive family ties in the United States, her community ties in the United States, her employment history in the United States, and the effect of deportation on her United States citizen child, supported a finding that the respondent would suffer extreme hardship were she to return to Mexico. *See Gutierrez-Centeno v. INS*, 99 F.3d 1529 (9th Cir. 1996); *Matter of O-J-O-*, 21 I&N Dec. 381 (BIA 1996). We agree with the Immigration Judge's finding of extreme hardship. Furthermore, based on the Service's failure to file an appeal regarding the Immigration Judge's finding of extreme hardship, the Immigration Judge's finding on this issue is determinative. Finally, we conclude that the respondent warrants a favorable exercise of discretion. Accordingly, the appeal will be sustained.

ORDER: The respondent's appeal is sustained, and the Immigration Judge's decision is vacated.

FURTHER ORDER: The respondent's request for suspension of deportation pursuant to section 244(a) of the Act is granted.

FOR THE BOARD