UNITED STATES DEPARTMENT OF JUSTICE
US Immigration Court

[redacted]

File(#) [redacted]

In the Matter of)
[redacted])
Respondent ~~(s)/Applicant(s)~~)

In Deportation ~~Exclusion~~ ~~Rescission~~ Proceedings

MEMORANDUM OF ORAL DECISION

____ Respondent/Applicant was granted/denied asylum under Section 208(a) of the Act.
____ Respondent/Applicant was granted/denied withholding of deportation under Section 243(h) of the Act.
____ Respondent was granted/denied relief under Section _____.
____ Respondent was granted/denied suspension of deportation under Section 244(a) of the Act.
____ Applicant/Respondent was granted a waiver under Section _____ of the Act and the proceedings were terminated.
__✓__ Respondent was granted ~~denied~~ adjustment of status under Section 245 of the Act.*
____ The Applicant's request for leave to withdraw the application for admission to the United States was granted.
____ Applicant is admitted as a _____ nonimmigrant until _____.
____ On condition that a maintenance of status and departure bond in the amount of $_____ be posted.
____ Respondent's adjustment of status was rescinded under Section 246 of the Act.
____ Motion to Reopen/Reconsider submitted by Service/Respondent/Applicant is granted/denied.
____ A stay of deportation is granted/denied.
____ The proceedings were terminated.
____ Applicant has been ordered excluded and deported from the United States.
____ Respondent was granted voluntary departure on or before _____ with alternate order of deportation to _____ or _____.
____ Respondent was ordered deported to _____ or _____.
__✓__ The Service/Respondent/~~Applicant~~ has/have waived appeal.
____ The Service/Respondent/Applicant has/have reserved appeal which must be filed by _____.

__XX__ THIS MEMORANDUM HAS BEEN SERVED ON THE RESPONDENT/APPLICANT AND COUNSEL. If the decision is appealed (except in bond redetermination proceedings), the full text or oral decision will be transcribed and will become the official decision.

Other: * The respondent is an LPR who is not subject to INA 216.

Date: August 23, 2004

Lawrence N. DiCostanzo
Immigration Judge

Served on all parties in open court. LND 8.23.04

00010f/LND/AKL

File: (b) (6)

Date: SEP 11 2003

In re: (b) (6)

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Robert B. Jobe, Esquire

CHARGE:

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

APPLICATION: Adjustment of status

ORDER:

PER CURIAM. This case is presently before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) In its decision, the court found that the Board erroneously affirmed the Immigration Judge's denial of a waiver under section 212(h) of the Immigration and Nationality Act, 8 U.S.C § 1182(h), whereas in fact the Immigration Judge found that the respondent did not require a section 212(h) waiver. The court remanded the case for the Board to consider whether the respondent is deserving of adjustment of status as a matter of discretion.

We note initially that although the court stated that we did not discuss the merits of the respondent's adjustment application, in fact, the second two paragraphs of our three-paragraph decision related to that issue, and we specifically found that the Immigration Judge had not abused his discretion in denying adjustment. We note in this regard that the Immigration Judge issued a lengthy and thoughtful decision regarding the discretionary aspects of this case, which fully recognized the respondent's equities. That decision, however, is now 4 years old. The Immigration Judge discussed the respondent's efforts at rehabilitation, including his participation in an alcohol management program. As noted by the Immigration Judge, at the time of the September 9, 1999, hearing, the respondent had completed 147 out of 548 days of the program.

(b) (6)

In view of the importance of rehabilitation in this case, as well as in light of the court's comments regarding the discretionary aspects of the respondent's case, we find that a remand to update the record regarding the respondent's more recent activities is the most appropriate course at this point. Accordingly, the record is remanded to the Immigration Judge for further proceedings consistent with this decision.

FOR THE BOARD