File: (b) (6) Date: JUN - 5 2012

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Charles E. Nichol, Esquire

ON BEHALF OF DHS: Stephen A. Johnston
Senior Attorney

APPLICATION: Cancellation of removal under section 240A(b)

This case was last before the Board on September 23, 2011, when we reinstated the respondent's appeal from the Immigration Judge's December 18, 2006, decision, pursuant to a (b) (6) order of the United States Court of Appeals for the (b) (6) The Immigration Judge denied the respondent's application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The record will be remanded to the Immigration Court for further proceedings.

To be statutorily eligible for cancellation of removal, a removable alien, who is not a lawful permanent resident, must show that he has been physically present in the United States for a continuous period of 10 years or more immediately preceding the service of the Notice to Appear, has been a person of good moral character for 10 years, and has not been convicted of specified crimes. Disqualifying convictions include offenses under section 212(a)(2), 237(a)(2), and 237(a)(3). *See also Matter of Cortez*, 25 I&N Dec. 301 (BIA 2010). In addition, the alien must show that his removal would result in exceptional and extremely unusual hardship to the alien's United States citizen or lawful permanent resident spouse, parent, or child. *See* 8 U.S.C. § 1229b(b).

The Immigration Judge found that the respondent was not eligible for cancellation of removal because he lacked good moral character. As a basis for her determination that the respondent is not a person of good moral character, the Immigration Judge determined that the respondent's testimony regarding his arrest for domestic violence in September 1993 was completely false (I.J at 5-6; Tr. at 82-85, 110-16). Under section 101(f)(6) of the Act, 8 U.S.C. § 1101(f)(6), false testimony for the purpose of obtaining an immigration benefit precludes a finding of good moral character. *See Kungys v. United States*, 485 U.S. 759 (1988). The bar applies to any misrepresentation "made with the subjective intent of obtaining immigration benefits, whether or not the misrepresentation is material to the immigration decision. *Id.* at 780.

Based on our review of the record, we do not find that the respondent's motive for testifying falsely was for the purpose of obtaining any benefits under the Act. That is, "willful

misrepresentations made for reasons other than an intent to obtain immigration benefits, including embarrassment, fear, or a desire for privacy," do not fall under the §101(f)(6) bar. *Id.* (internal citation omitted). We therefore sustain the appeal insofar as the Immigration Judge found that §101(f)(6) precluded a finding of good moral character As the Immigration Judge noted, the respondent's testimony and his wife's testimony related to issues other than the domestic violence incident were consistent with each other, internally consistent, relatively detailed, and plausible (I.J. at 5).

We find that a remand is warranted in this case to further address good moral character under the catch-all provisions of §101(f) and to allow the parties to update the record. 8 C.F.R. § 1003.1(d)(3)(i) (stating that the Board may not engage in fact-finding in the course of deciding appeals); *Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002).

ORDER: The Immigration Judge's December 18, 2006, decision is vacated.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings and the entry of a new decision.

FOR THE BOARD