File: (b) (6) Date: AUG 0 9 2007

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Alex C. Park, Esquire

ON BEHALF OF DHS: Justin M. Price
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(2)(D), I&N Act [8 U.S.C. § 1182(a)(2)(D)(i)] - Prostitution

Sec. 212(a)(2)(C), I&N Act [8 U.S.C. § 1182(a)(2)(C)] - Controlled substance trafficker

APPLICATION: Remand

This case was last before us on October 25, 2005, when we reopened the respondent's proceedings pursuant to a remand from the United States Court of Appeals for the (b) (6) At that time, we accepted the respondent's appeal by certification and ordered a new briefing schedule. In lieu of contesting the Immigration Judge's January 10, 2003, decision on appeal, the respondent submitted a motion to remand requesting the opportunity to reapply for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a). The Department of Homeland Security (DHS) argues that the respondent has abandoned her appeal and contests the respondent's request for a remand inasmuch as the respondent is not eligible for cancellation of removal.

The respondent no longer contests the Immigration Judge's January 10, 2003, decision finding her removable, but rather has submitted a motion "in [] place of the appeals brief." Respondent's motion at 2. Because the respondent requests the opportunity to reapply for cancellation of removal based upon new circumstances and does not contest the Immigration Judge's previous findings, we will dismiss the appeal.

We now turn our attention to the respondent's motion to reopen. The respondent argues that because her 1987 conviction was dismissed for lack of prosecution she can now meet the "7 years of continuous residence" requirement under section 240A(a)(2) of the Act, 8 U.S.C. § 1229b(a)(2). The DHS disagrees with this assertion. The respondent was admitted into the United States as a

lawful permanent resident on September 14, 1985. Respondent's brief at 3; (Exh. 1A). The respondent was convicted of the class B misdemeanor offense of prostitution in 2002. Although the respondent was convicted in 2002, the actual offense was *committed* on or before February 28, 1992, when the respondent was arrested. Hence, the respondent committed the offense 6 years and approximately 5 months after she was admitted into the United States as a lawful permanent resident.

Section 240A(d)(1) of the Act provides that "any period of continuous residence . . . in the United States shall be deemed to end . . . when the alien has committed an offense referred to in section 212(a)(2) that renders the alien inadmissible to the United States under section 212(a)(2)." 8 U.S.C. § 1229b(d)(1). Irrespective of whether or not the respondent's conviction was vacated, the respondent's prostitution conviction renders her inadmissible under section 212(a)(2)(D) of the Act; 8 U.S.C. § 1182(a)(2)(D), as an alien who has engaged in prostitution within 10 years of her admission. Inasmuch as the respondent committed the offense which renders her inadmissible under section 212(a)(2)(D) prior to obtaining 7 years of continuous residence in the United States, we must agree with the DHS that the respondent has not established that she is eligible for cancellation of removal. 8 U.S.C. § 1229b(a)(2). Accordingly, we will deny the respondent's motion to reopen and remand.

ORDER: The appeal is dismissed.

FURTHER ORDER: The motion to reopen and remand is denied.

Patricia A. Cole

FOR THE BOARD