File: A42 545 157 - Los Angeles Date:

In re: MAKOUEI FARVARDIN HEYDARZADEH FEB 11 2003

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Stuart I. Folinsky, Esquire

ON BEHALF OF SERVICE: Jeffrey C. Finnegan
Assistant District Counsel

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

APPLICATION: Waiver of inadmissibility pursuant to 8 U.S.C. § 1181(b)

The respondent appeals from an Immigration Judge's September 9, 1998, decision finding her inadmissible as charged, denying her application for a waiver of inadmissibility, and ordering her removed to her native Iran. The respondent's request for oral argument is denied. 8 C.F.R. § 3.1(e) (2002). The appeal will be sustained.

The respondent is a 75-year-old female, native and citizen of Iran, who adjusted her status to that of a lawful permanent resident of the United States in 1992. In 1995, she traveled to Iran and remained there until April 1998, when she sought admission to the United States as a returning lawful permanent resident by presenting a valid, unexpired resident alien card (Form I-551). The Immigration and Naturalization Service determined that the respondent had abandoned her lawful permanent resident status and charged her with removability as an alien inadmissible due to the lack of a valid visa or entry document. *See* section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I). The Immigration Judge sustained the charge of removability and concluded that the respondent was ineligible for relief from removal.

On appeal, the respondent argues that the Immigration Judge should have granted her a waiver of inadmissibility pursuant to section 211(b) of the Act, 8 U.S.C. § 1181(b). To establish her eligibility for such a waiver, the respondent must demonstrate that she is a "returning resident immigrant," i.e., that she was previously admitted for permanent residence in the United States and that she is returning from a "temporary" visit abroad. *See* sections 101(a)(27)(A) and 211(b) of the Act, 8 U.S.C. §§ 1101(a)(27)(A) and 1181(b). As an alien previously admitted for permanent residence and in possession of a valid, unexpired resident alien card, the respondent has a "colorable claim to returning resident status," and is therefore entitled to a presumption of eligibility for a

section 211(b) waiver. *See Matter of Huang*, 19 I&N Dec. 749, 754 (BIA 1988). However, the Service may rebut this presumption if it demonstrates by clear, unequivocal and convincing evidence that the respondent abandoned her lawful permanent resident status. *See Matter of Huang, supra.* We ascertain an alien's intent to abandon lawful permanent resident status by examining the duration of her absence, the location of her family ties, property holdings, and job, her purpose in departing from the United States, whether her visit abroad could have been expected to terminate within a relatively short period of time, and whether that termination date was fixed by some early event. *See, e.g., Matter of Huang, supra,* at 755-57; *Matter of Kane*, 15 I&N Dec. 258, 262-63 (BIA 1975). Considering these factors, we disagree with the Immigration Judge that the Service sustained its burden of establishing that the respondent abandoned her lawful permanent resident status.

The Service argues, and the Immigration Judge found, that the respondent's absence from the United States from 1995 to 1998 was significant evidence that she intended to remain in Iran and abandon her status as a lawful permanent resident of the United States. It is true that an alien's lengthy absence may be significant evidence of her intention to abandon lawful permanent resident status. *See Matter of Huang, supra,* at 755. However, we have cautioned that an alien's lengthy absence from the United States should not be construed as evidence of an abandonment of lawful resident status where the delayed return was an unavoidable consequence of unforeseen circumstances, "so long as the alien continued to intend to return as soon as his original purpose was completed." *See Matter of Kane, supra,* at 263.

The evidence reflects that, at the time of her initial departure to Iran, the respondent intended to return to the United States in a matter of months after visiting some of her children (Tr. at 30, 35). The veracity of the respondent's assertion to this effect is bolstered by the fact that, upon her departure, she left many of her personal possessions and most of her clothing in her bedroom in the home of her United States citizen son (Tr. at 29-30; 42). Once in Iran, the respondent experienced cardiovascular problems and hypertension which required her hospitalization on a number of occasions and made it difficult for her to travel (Tr. at 21, 31-32, 36, 40-41). As a result, she remained under the care of her son in Iran until she felt well enough to travel back to the United States (Tr. at 46, 47). The respondent has significant family ties in both the United States and Iran, and she presently lives with her United States citizen son in California (Tr. at 28, 42-43). She has not recently been employed in either country, she receives no pension as an Iranian citizen, and she has no significant property holdings in either country (Tr. at 32-33, 38-39, 42).

We are persuaded that the respondent intended to return to the United States when she made her initial departure to Iran in 1995, and that her delayed return was an unavoidable consequence of her unforeseen illnesses. The respondent's familial and economic ties to the United States and Iran appear to be in equipoise, and the respondent testified that she "continued to intend to return" to the United States throughout her time in Iran. The Service has adduced no "clear, unequivocal and convincing evidence" to refute the respondent's testimony in this regard. Consequently, we find that the respondent is statutorily eligible for a waiver of inadmissibility under section 211(b) of the Act. Moreover, because the record contains no hint of adverse discretionary factors, we also conclude that she merits such relief in the exercise of discretion.

Accordingly, the following orders shall be issued.

ORDER: The appeal is sustained.

FURTHER ORDER: The Immigration Judge's decision is vacated in part and the respondent's application for a waiver of inadmissibility under section 211(b) of the Act is granted.

FOR THE BOARD