U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 20530

McGaughey, Erin Elizabeth
Soreff Law
705 Second Avenue, Suite 1601
Seattle, WA 98104

DHS/ICE Office of Chief Counsel - SEA
1000 Second Avenue, Suite 2900
Seattle, WA 98104

Name: SOT, VANNAK

A 096-718-092

Date of this notice: 3/13/2014

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Hoffman, Sharon

AtkinsoP
Userteam: Docket

File: A096 718 092 – Seattle, WA

Date: MAR 13 2014

In re: VANNAK SOT

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Erin McGaughey, Esquire

ON BEHALF OF DHS: Hana A. Sato
Assistant Chief Counsel

APPLICATION: Termination

AMENDED ORDER[1]

The Department of Homeland Security (DHS) appeals from the Immigration Judge's February 6, 2012, decision terminating proceedings. The appeal will be dismissed.

We review Immigration Judges' findings of fact, including the determination of credibility, under a clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, including whether the parties have met the relevant burdens of proof, and issues of discretion under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We find no clear error in the Immigration Judge's positive credibility determination and findings of fact. *See* 8 C.F.R. § 1003.1(d)(3)(i). Therefore, on de novo review, we find insufficient grounds to reverse the Immigration Judge's conclusion that the DHS has not met its burden to demonstrate by clear and convincing evidence that the respondent is removable as charged under sections 237(a)(1)(A) and 237(a)(1)(G)(ii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1227(a)(1)(A), 1227(a)(1)(G)(ii) (I.J. at 3-5). *See* section 240(c)(3) of the Act, 8 U.S.C. § 1229a(c)(3); 8 C.F.R. § 1240.8(a). Accordingly, the following order shall be entered.

ORDER: The DHS' appeal is dismissed.

FOR THE BOARD

[1] This order amends our prior order dated February 25, 2014, to delete the portion of that order remanding proceedings for the DHS to update background checks, as these proceedings have been terminated and such a remand is unnecessary.

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Seattle, WA 98104

DHS/ICE Office of Chief Counsel - SEA
1000 Second Avenue, Suite 2900
Seattle, WA 98104

Name: SOT, VANNAK

A 096-718-092

Date of this notice: 2/25/2014

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Hoffman, Sharon

Lulseges
Userteam: Docket

File: A096 718 092 – Seattle, WA Date: FEB 25 2014

In re: VANNAK SOT

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Erin McGaughey, Esquire

ON BEHALF OF DHS: Hana A. Sato
Assistant Chief Counsel

APPLICATION: Termination

The Department of Homeland Security (DHS) appeals from the Immigration Judge's February 6, 2012, decision terminating proceedings. The appeal will be dismissed.

We review Immigration Judges' findings of fact, including the determination of credibility, under a clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, including whether the parties have met the relevant burdens of proof, and issues of discretion under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We find no clear error in the Immigration Judge's positive credibility determination and findings of fact. *See* 8 C.F.R. § 1003.1(d)(3)(i). Therefore, on de novo review, we find insufficient grounds to reverse the Immigration Judge's conclusion that the DHS has not met its burden to demonstrate by clear and convincing evidence that the respondent is removable as charged under sections 237(a)(1)(A) and 237(a)(1)(G)(ii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1227(a)(1)(A), 1227(a)(1)(G)(ii) (I.J. at 3-5). *See* section 240(c)(3) of the Act, 8 U.S.C. § 1229a(c)(3); 8 C.F.R. § 1240.8(a). Accordingly, the following orders shall be entered.

ORDER: The DHS' appeal is dismissed.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
SEATTLE, WASHINGTON

File: A096-718-092 February 6, 2012

In the Matter of

VANNAK SOT	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: Inadmissible at time of admission - fraudulent marriage.

APPLICATIONS: Termination of proceedings.

ON BEHALF OF RESPONDENT: PAUL SERUB

ON BEHALF OF DHS: HANA A. SATO

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent is a 32-year-old married male who is a native and citizen of Cambodia. He was placed in proceedings by the filing of his Notice to Appear on September 24, 2010. The respondent has conceded alienage and that he adjusted status to that of a lawful permanent resident on July 10, 2006, based upon his marriage to Sandy Sung, who is a United States citizen.

The respondent did indeed come to the United States on

a petition filed by Ms. Sung and it is noted that when he applied for naturalization, he was interviewed by Immigration Officers as was Ms. Sung.

Because the respondent has lawful permanent resident status, as I have indicated to counsel, I do find that the Department has the burden to establish by clear, convincing and unequivocal evidence that the charges made against the respondent are in fact established. See, for example, Matter of Huang, 19 I&N Dec. 749 (BIA 1988).

Because of the Department's burden, I have grouped the Department's evidence as Composite Exhibit 2 and those of the respondent as Composite Exhibit 3.

The basis of the Department's case are two statements, one by Ms. Sung and the other signed by the respondent. These statements do establish that the respondent, "and I entered into a fake marriage." At master calendar hearing, when we discussed the issues presented in this case, and the Department provided the pertinent statement, I strongly encouraged both sides to present the testimony of Ms. Sung. It was advised at the outset of this hearing that arrangements had been made for her to testify and I called at the precise time that I was requested to do so. When I reached her on my second attempt at telephoning, she advised me that she was unwilling to answer any questions.

I do take note of the answers set forth by the Ninth Circuit in such cases as Saidane v. INS, 129 F.3d 1068 (9th Cir.

1997) with regard to reliance on hearsay, out-of-court statements.

I take note that this case turns on credibility and in making my credibility evaluation, I am entirely aware of the standards set forth by the Court in Ren v. Holder, 648 F.3d 1079 (9th Cir. 2011).

The respondent has testified that he entered into the marriage with Ms. Sung on the basis of love and that it was a genuine marriage. I do take note that this couple are still married, although they have of course lived apart from one another since approximately the end of 2008. However, the testimony and other documentation has been that when the respondent came to this country on November 18, 2005, he did live as man and wife with Ms. Sung.

The respondent testified that when he came to Immigration offices, on April 27, 2010, when the two statements were prepared, his ability in English was limited. It is very true, as argued by the Department, that the respondent was hoping to become naturalized and did not seek any waiver of the English requirement. I also do recognize that the Department has provided us with certain documents as a part of its Composite Exhibit 2, with regard to the respondent's ability in English. He did answer, as noted on page 5, certain simple questions, those being "what is freedom of religion", two, "name one state that borders Canada", three, "when was the

Constitution written", four, "when must all men register for the Selective Service", five, "what ocean is on the east coast of the United States", and six, "how many U.S. senators are there." However, when it came to the written test, and I take note that pages 6 and 7, which apparently the first and only question asked was "we pay taxes" on the respondent's answer form, that is to say page 6, as noted on this record, the first word is, W-E, the second word looks to me to be, P-A-E-Y, but perhaps it simply, E-A-Y, but the third word is spelled, T-A-K-E. The immigration examiner checked the word wrote correct and "passed". This is hardly a challenging test of an individual's ability in English. The respondent testified that while he signed and wrote the statement, it was at the specific direction of his wife, Ms. Sung.

I have been provided with a number of photographs with regard to this couple's engagement ceremony in Cambodia, their having a joint bank account, as well as evidence that Ms. Sung used for her own purposes, money earned by the respondent and that she had children from other relationships.

In my view, when I consider the evidence taken as a whole, the Department has simply not established the charges that it has made herein. As noted, the couple continue to remain married and I do not find any basis under Ninth Circuit case law to articulate an adverse credibility determination that I would believe would pass muster thereunder. Take note that

the couple apparently had communications by telephone for a number of months in 2004. Ms. Sung went to Cambodia towards the end of 2004 for their engagement party. This couple did have a honeymoon and traveled together and that the respondent and she consummated their marriage.

ORDER

IT IS HEREBY ORDERED that these proceedings be terminated on the basis that the Department has not met their burden.

February 6, 2012

KENNETH JOSEPHSON
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE KENNETH JOSEPHSON, in the matter of:

VANNAK SOT

A096-718-092

SEATTLE, WASHINGTON

is an accurate, verbatim transcript of the recording as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

Cheryl A. Mance

CHERYL A. MANCE (Transcriber)

DEPOSITION SERVICES, Inc.

MARCH 31, 2012

(Completion Date)