

Immigration Court: BIA

Case: *Matter of M-L-M-A-, 26 I&N Dec. 360 (BIA 2014)*

Date: August 5, 2014

Adjudicated by: Pauley, Cole, Wendtland

Opinion: Pauley

Tags: Special Rule Cancellation of Removal, good moral character, equities

Question Presented:

1. Does a bad act >3 years from final decision preclude grant of special rule cancellation of removal?
2. Can a respondent still apply for special rule cancellation of removal if she has divorced abuser and started another relationship?

Holdings:

1. Cancellation is a continuing application WRT GMC – false testimony >3 years ago does not count against GMC.
2. If a respondent has not yet applied for special rule cancellation, she can do so even if she has divorced the abuser and started a new relationship.

Rationale:

1. "... in order to give rise to a statutory bar, any relevant considerations generally must fall within the 3-year period preceding the entry of a final administrative order."
2. This case is distinguished from *Matter of A-M-* because (a) she has may equities that overcome the long-ago divorce & new relationship; and (b) she has not yet played the VAWA card, so it's not a double dip.

Facts: (361) Mexico. QRs are LPR parents & USC kids. Divorced abuser in 2001 and has had long term relationship with another man since then. Filed false I589 to get work permit in 1997.

Procedural History:

- **3/2/2010:** IJ's decision – adverse credibility finding because R had not been truthful about the identities of those she entered US with & filed a fraudulent asilo application in 1997. No discretion, bcz she had divorced abuser in 2001 and had a long-term relationship with someone else now.
- **9/9/2011:** remanded to IJ for further consideration of special rule cancellation application WRT good moral character of applicant and did not merit an exercise of discretion.
- **10/25/2012:** IJ reaffirmed denial because no GMC within statutory period, but clarified that false testimony at the border was not made with subjective intent to obtain benefit. Reaffirmed no discretion bcz of divorce & new relationship.

Appeals to Statute & Precedent:

- **INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2) (2006):** Special rule cancellation of removal
- **INA § 101(f), 8 U.S.C. § 1101(f) (2006):** Defining good moral character

- **REAL ID Act of 2005 – INA § 240(c)(4)(C), 8 U.S.C. § 1229a(c)(4)(C) (2012):** “an adverse credibility finding may be based on internal inconsistencies within the respondent’s testimony or inconsistencies between her testimony and that provided by other witnesses.” (*M-L-M-A-* at 362)
- ***Matter of A-M-, 25 I&N Dec. 66, 77-78 (BIA 2008):*** Finding that an alien’s divorce from an abusive spouse, remarriage, and previous self-petition for VAWA relief are relevant factors in determining whether special rule cancellation should be granted in the exercise of discretion. (R obtained LPR thru VAWA, so she had already played that card.)
- ***Matter of Garcia, 24 I&N Dec. 179, 182-83 (BIA 2007):*** special rule cancellation application is a continuing one; GMC period accrues until entry of a final administrative order.
- ***Matter of Ortega-Cabrera, 23, I&N Dec. 793, 797-98 (BIA 2005):*** period of GMC is calculated backward from date of final administrative decision.

Discussion:

- “Assuming that the adverse credibility finding and the respondent’s fraudulent asylum application are relevant to whether the ‘catchall’ provision at section 101(f) is triggered, we conclude that these factors alone are not so significant as to prevent the respondent from meeting her burden of proof in establishing good moral character.” 363
- Lists equities that merit a favorable exercise of discretion: length of time in U.S., family ties and QRs, hardship, no criminal record, never worked in US w/o authorization. 363
 - Divorce long ago and new relationship *would* weigh against favorable exercise of discretion, but her equities overcome this.
- Distinguished from *Matter of A-M-:*
 - That R had already played the VAWA card to get her LPR. Don’t use it AGAIN.
 - “Although the respondent is no longer in the abusive relationship, she has not previously received VAWA relief, nor does she have any other currently available means of regularizing her status.” 364