

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED

Mar 11, 2024

ON BEHALF OF RESPONDENTS: Mary Foden, Esquire

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Hartford, CT

Before: Greer, Appellate Immigration Judge; Saenz, Appellate Immigration Judge; Crossett,
Temporary Appellate Immigration Judge¹

Opinion by Appellate Immigration Judge Greer
Temporary Appellate Immigration Judge Crossett, dissents without opinion

GREER, Appellate Immigration Judge

The respondents, natives and citizens of Ecuador, appeal the Immigration Judge's May 12, 2021, decision denying their applications for cancellation of removal for certain nonpermanent residents under section 240A(b)(1) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229b(b)(1), and granting them voluntary departure under section 240B(b) of the INA, 8 U.S.C. § 1229c(b).² The Department of Homeland Security has not responded to the appeal. The appeal will be sustained and the record will be remanded.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the sole issue is whether the respondents established that their two United States citizen children, who were ages 18 and 14 at the time of the Immigration Judge's decision, will experience exceptional and extremely unusual hardship upon their removal from the United States

¹ Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. See generally 8 C.F.R. § 1003.1(a)(1), (4).

² The respondents in this matter are a married couple (IJ at 1-2). Their removal proceedings were consolidated for administrative convenience.

(IJ at 2-4).³ The Immigration Judge concluded that the respondents did not meet their burden of proof in this regard (IJ at 3-10). INA § 240A(b)(1)(D), 8 U.S.C. § 1229b(b)(1)(D).

Upon de novo review, we reverse the Immigration Judge's decision that the respondents did not establish that their removal will result in exceptional and extremely unusual hardship to either of their qualifying relatives (IJ at 3-10).⁴ Section 240A(b)(1)(D) of the INA, 8 U.S.C. § 1229b(b)(1)(D), requires a noncitizen to establish that "removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence." The exceptional and extremely unusual hardship for cancellation of removal is based on a cumulative consideration of all hardship factors for the qualifying relative. *Matter of J-J-G-*, 27 I&N Dec. 808, 811 (BIA 2020). Additionally, the hardship to a noncitizen's qualifying relative must be "substantially different from, or beyond" the ordinary hardship associated with a person's ordered departure from the United States. *Matter of Monreal*, 23 I&N Dec. 56, 62 (BIA 2001).

The record indicates that the respondents' removal from the United States will result in exceptional and extremely unusual hardship to their son. If the respondents are removed, their son will go with them to Ecuador (IJ at 4; Tr. at 44). However, if the respondents and their son leave the United States, their son will suffer hardship relating to the loss of his opportunity to have a professional soccer career with the Hartford Athletic. The respondents' son is an accomplished soccer player who has been accepted by a professional soccer team's academy, putting him on track to pursue becoming a professional soccer player in the United States (IJ at 5; Tr. at 48-53, 88; Respondents' Br. at 11; Exh. 11 at 642). The loss of a potential professional soccer career and all the opportunities his achievements would bring in the United States, is an uncommon hardship that is "substantially beyond" the ordinary hardship that would be expected when a close family member leaves this country, when considered in the aggregate with other hardship factors. *Matter of Monreal*, 23 I&N Dec. at 62.

The respondents' son will also suffer some hardship related to his education. The respondents' son is an excellent student who has received straight A's, academic awards, and a merit scholarship to attend a private high school (IJ at 5; Tr. at 48-54; Exh. 11 at 638-41). However, the respondents' son does not read, write, or speak Spanish, and will be placed at an educational disadvantage in Ecuador (IJ at 7; Tr. at 53). See *Matter of Recinas*, 23 I&N Dec. 467, 470-73 (BIA 2002). This

³ The parties stipulated below that hardship is the only issue regarding eligibility for cancellation of removal (IJ at 2-3; Tr. at 35). INA § 240A(b)(1)(A)-(D), 8 U.S.C. § 1229b(b)(1)(A)-(D).

⁴ While the appeal was pending, the respondents' daughter turned 21 and is no longer considered a qualifying relative (Respondents' Br. at 2). INA § 101(b)(1), 8 U.S.C. § 1101(b)(1) (defining "child" as "an unmarried person under twenty-one years of age"); INA § 240A(b)(1)(D), 8 U.S.C. § 1229b(b)(1)(D); *Matter of Isidro*, 25 I&N Dec. 829 (BIA 2012) (recognizing that an application for cancellation of removal is a "continuing" application and that a respondent did not have a qualifying relative because their qualifying relative who had been considered a "child" at the time the respondent filed the application, had reached the age of 21 before the Immigration Judge adjudicated the application). Therefore, we only address the respondents' son's hardship.

type of hardship is particularly acute for an older child who will not adapt to advanced schooling in a foreign language the way a younger child would. *Id.* at 472.

Additionally, the son's severe food allergies will cause him to experience some hardship. Due to suffering from food allergies, the respondents' son has been hospitalized in the past and must always carry an EpiPen (IJ at 5-6, 8; Tr. at 51-52, 66-67). *Matter of Monreal*, 23 I&N Dec. at 63-64; *Matter of Recinas*, 23 I&N Dec. at 470-73. The respondents have expressed concern that the danger to their son will be increased due to the inadequate food labeling in Ecuador, making it more likely he will consume a substance to which he is allergic, and because he may not have timely access to medical care there (Tr. at 51-52).

Furthermore, the respondents' son has lived in the United States for all of his life and will suffer hardship related to reduced financial resources, attending a new school, and being separated from his friends in the United States. While these economic, educational and emotional hardship factors are generally considered to be common consequences of removal, they are still significant factors that need to be analyzed together with the other hardship factors presented in this case. *Matter of Monreal*, 23 I&N Dec. at 63-64; *Matter of Recinas*, 23 I&N Dec. at 470-73.

Based on the foregoing, we conclude that the cumulative hardship the qualifying relative will experience is "substantially different from, or beyond" the hardship that typically occurs when a parent departs from the United States, and it therefore meets the exceptional and extremely unusual hardship standard. Thus, we reverse the Immigration Judge's determination that the respondents' son will not suffer exceptional and extremely unusual hardship if the respondents are removed from the United States (IJ at 3-10). As the parties stipulated that the respondents met the other elements required for the cancellation of removal, the respondents have established eligibility for this relief and the record will be remanded for the necessary background and security checks to be updated.

Accordingly, the following orders will be entered.

ORDER: The respondents' appeal is sustained.

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).

Temporary Appellate Immigration Judge John P. Crossett respectfully dissents without opinion.