

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

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(b)(6)

Respondent

FILED

Oct 18, 2021

ON BEHALF OF RESPONDENT: Scott A. Marks, Esquire

ON BEHALF OF DHS: Margaret LaDow, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Seattle, WA

Before: Creppy, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Creppy

CREPPY, Appellate Immigration Judge

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's decision dated October 25, 2018, finding him removable as charged and denying his application for cancellation of removal for non-permanent residents under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). During the pendency of the appeal, the respondent filed a motion to remand. The Department of Homeland Security (DHS) opposes the respondent's appeal, but has not responded to the motion. The motion to remand will be granted.

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).

The Immigration Judge denied the respondent's application for cancellation of removal after concluding that he did not establish the requisite "exceptional and extremely unusual hardship" to a qualifying relative (IJ at 3-5). In his motion to remand, the respondent asserts that subsequent to the Immigration Judge's decision his wife was diagnosed with colon cancer, which has required multiple surgeries and chemotherapy. In addition, the respondent has submitted evidence related to the qualifying relative's new medical condition. Such evidence was not previously available and is material to the exceptional and extremely unusual hardship requirement for cancellation of removal. See 8 C.F.R. § 1003.2(c)(1); *Matter of Coelho*, 20 I&N Dec. 464, 471-73 (BIA 1992).

In light of the above, and as the DHS has not replied to the motion (8 C.F.R. § 1003.2(g)(3)), we will grant the respondent's motion to reopen. We express no opinion regarding the ultimate

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outcome of these proceedings on remand. *See Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996).¹ Accordingly, the following order will be entered.

ORDER: The respondent's motion to remand is granted.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with this opinion, and the entry of a new decision.

¹ We note that on appeal the respondent argues that the Immigration Judge erred by not granting administrative closure (Respondent's Br. at 11-13). In denying such relief, the Immigration Judge relied upon *Matter of Castro-Tum*, 27 I&N Dec. 187 (A.G. 2018) (IJ at 2), which has since been overruled by the Attorney General. *See Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021). As we are granting the respondent's motion to remand, we need not reach this issue on appeal.