

Falls Church, Virginia 22041

File: A (b)(6) – Lumpkin, GA

Date:

NOV – 2 2017

In re: (b)(6) a.k.a. (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Brennan B. Bair, Esquire

ON BEHALF OF DHS: Angelia Solomon
Assistant Chief Counsel

APPLICATION: Cancellation of removal under section 240A(b) of the Act

The Department of Homeland Security (DHS) appeals from an Immigration Judge's May 24, 2017, decision.¹ The Immigration Judge granted the respondent's application for cancellation of removal for nonpermanent residents, under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b) (2017). The DHS filed a brief concerning the decision of the Immigration Judge. The respondent submitted a "Motion for Summary Affirmance." The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i) (2017). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii). As the respondent is subject to removal from the United States, it is his burden to establish eligibility for relief from removal. *See* section 240(c)(4)(A) of the Act; 8 C.F.R. § 1240.8(d).

After taking into consideration the entirety of the facts and circumstances in this case, and the arguments made on appeal, we find no clear error in the Immigration Judge's findings of fact, and otherwise find no basis for reversing her decision to grant cancellation of removal for nonpermanent residents, under section 240A(b) of the Act.² In particular, we agree with the Immigration Judge's determination that the respondent showed the required exceptional and

¹ The Immigration Judge delivered an oral decision on May 24, 2017. She issued a different written decision, also dated May 24, 2017.

² We acknowledge the DHS' argument that the Immigration Judge acted to abbreviate the government's questioning of the respondent (DHS Notice of Appeal; DHS Br). However, we find that the evidence in the record of proceedings is sufficient to uphold the grant of relief in this case. We caution the Immigration Judge to refrain from accusing government counsel of going on "fishing expeditions," and unnecessarily criticizing the government's position in opposing applications for relief.

extremely unusual hardship to qualifying relatives, given the aggregate of the hardship factors presented, including the health issues of the respondent's two United States citizen children.

A remand to the Immigration Court is necessary to allow the DHS to complete relevant background examinations and investigations. Accordingly, the following orders will be entered.

ORDER: The appeal of the DHS 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 DHS 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

Board Member Charles K. Adkins-Blanch respectfully dissents without opinion regarding only the exceptional and extremely unusual hardship issue.