

Falls Church, Virginia 22041

File: A (b)(6) – Philadelphia, PA

Date: **NOV - 7 2017**

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Daniel M. Pell, Esquire

ON BEHALF OF DHS: Joseph C. Scott
Assistant Chief Counsel

APPLICATION: Cancellation of removal for non-permanent residents

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's November 30, 2016, decision denying his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). The Department of Homeland Security submitted a motion for summary affirmance. The appeal will be sustained, the respondent will be found eligible for cancellation of removal, and the record will be remanded to the Immigration Judge for any necessary background and security investigations.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The Immigration Judge found the respondent met the requirements for continuous physical presence and good moral character, and had no disqualifying criminal record (IJ at 12).¹ The sole basis for the denial was that the respondent had not shown that his United States citizen daughter would suffer exceptional and extremely unusual hardship (IJ at 12-14).

We discern no clear error in the Immigration Judge's factual findings. However, upon de novo review, we conclude that, although this is a close case, the respondent did establish exceptional and extremely unusual hardship to warrant a grant of cancellation of removal. *See Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001).

Further, we will favorably exercise our discretion in this case. The Immigration Judge found that the respondent: had been in the United States for nearly 20 years, and had family and community ties; had engaged in "entrepreneurial pursuits" by opening and running 4 restaurants,

¹ The respondent also made a Motion to Suppress, which the Immigration Judge denied, and which the respondent appeals (IJ at 9-11; Respondent's Br. at 9-14). Given the disposition of this case, we do not consider the issue. *See Matter of J-G-*, 26 I&N Dec. 161, 170 (BIA 2013) (stating that an agency is not required to make findings on issues which are unnecessary to the result reached).

employing “nearly thirty” people; and generally demonstrated he was a “hardworking and industrious individual” (IJ at 2-5, 14). The respondent has no criminal record (IJ at 12; Tr. at 108). The negatives include the respondent’s self-employment while undocumented and his owing of personal taxes (IJ at 14; Tr. at 127-28).² On balance, we conclude the favorable equities outweigh the negative factors. We agree with the Immigration Judge that the respondent should set up a repayment plan for his owed taxes.

ORDER: The appeal is sustained.

FURTHER ORDER: The respondent is eligible for cancellation of removal under section 240A(b)(1) of the Act.

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

² The respondent pays corporate and personal taxes; it appears that the corporate taxes are in compliance (Tr. at 125-29, 134).