

Falls Church, Virginia 22041

File: (b)(6) – Florence, AZ

Date: **DEC 13 2017**

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Elizabeth Ruth Fitzgibbon, Esquire

ON BEHALF OF DHS: Troy E. Larkin
Assistant Chief Counsel

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

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's June 29, 2017, decision denying his applications for cancellation of removal for nonpermanent residents under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The appeal will be sustained, and the record will be remanded.

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). 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).

The Immigration Judge denied the respondent's application upon finding that he failed to show that his removal would result in exceptional and extremely unusual hardship to his two United States citizen children, ages 9 and 8, at the time of the hearing (IJ at 6-7). In the event of the respondent's removal from the United States, his children would remain in this country with their mother, who does not have lawful status (IJ at 6; Tr. at 64-67). To determine whether the respondent's removal would result in exceptional and extremely unusual hardship to a qualifying relative, we examine the hardship factors in their totality. *Matter of Recinas*, 23 I&N Dec. 467, 472 (BIA 2002).

In this case, the record reflects that the respondent's 8-year-old son has significant intellectual and emotional developmental delays for which he receives special education, and various forms of therapy (IJ at 6; Tr. at 41-71; Exh. 6). Given the severity of the respondent's son's disabilities, we conclude that the hardship caused by the separation from his father, who, prior to his immigration detention was an active participant in his care and upbringing, would be substantially beyond that which is typically caused by a parent's removal (Tr. at 44-45; Exh. 6). *See Matter of Monreal*, 23 I&N Dec. 56, 65 (BIA 2001). Thus, we conclude that the hardship factors in their totality establish the requisite exceptional and extremely unusual hardship to the respondent's son in this matter. *See Matter of Monreal*, 23 I&N Dec at 65.

The Immigration Judge explicitly found that the respondent satisfied the remaining statutory requirements for cancellation of removal under section 240A(b)(1) of the Act, and demonstrated that he merits a favorable exercise of discretion (IJ at 7). Accordingly, we will sustain the

respondent's appeal, and remand the record for updating of the required background and security checks.

ORDER: The 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).

A handwritten signature in black ink, consisting of a large 'C' followed by several loops and a final flourish.

FOR THE BOARD