

Falls Church, Virginia 22041

File: (b)(6) — San Francisco, CA

Date: **FEB 16 2018**

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mei F. Chen, Esquire

ON BEHALF OF DHS: Samuel Y. Kim
Assistant Chief Counsel

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

The Department of Homeland Security ("DHS") appeals from an Immigration Judge's December 22, 2016, decision granting the respondent's application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. §1229b(b). The appeal will be dismissed.

We review an Immigration Judge's factual determinations, including credibility determinations, for clear error. 8 C.F.R. § 1003.1(d)(3)(i) (2017). The Board uses a de novo standard of review for questions of law, discretion, judgment, and all other issues in appeals from decisions of Immigration Judges. 8 C.F.R. § 1003.1(d)(3)(ii) (2017).

The respondent is a native and citizen of Mexico who entered the United States in or about 1991 at the age of 5 or 6 years (IJ at 1). He is married to a lawful permanent resident of the United States and they have two United States citizen children (IJ at 2). The Immigration Judge granted the respondent's application for cancellation of removal for nonpermanent residents, based on a finding that his wife and two children will suffer exceptional and extremely unusual hardship if he is removed from the United States. On appeal, the DHS argues that the hardship to the respondent's wife and children is not beyond that which would typically be experienced by the family of an alien who is required to leave the United States and that the respondent's convictions for driving under the influence ("DUI") should have weighed against a positive exercise of discretion on his application for relief.

We have considered the DHS's appellate arguments and for the following reasons, will affirm the Immigration Judge's decision. As an initial matter, we find no clear error in the Immigration Judge's factual findings, including that the respondent's sons have speech and language delays that are attributed (at least with regard to one son) to hearing loss (IJ at 12). The therapy being received by the children in the United States has been beneficial and will not be forthcoming in Mexico to the same degree, if at all, based on expert witness testimony (*Id.*). The removal of the respondent would also cause his wife to depart with him, and she would be leaving a professional job that she would not be able to duplicate in Mexico (*Id.*). Based on these factual findings and on the entire record, we will affirm the finding that the respondent established that his removal to Mexico would cause exceptional and extremely unusual hardship to his qualifying relatives.

The DHS also challenges the Immigration Judge's positive exercise of discretion, based on the respondent's multiple DUI arrests and convictions and related probation violations. In exercising our discretion under section 240A of the Act, this Board must balance the adverse factors evidencing the alien's undesirability as a permanent resident with the social and humane considerations presented in his behalf to determine whether the granting of discretionary relief appears in the best interest of this country. See *Matter of C-V-T-*, 22 I&N Dec. 7 (BIA 1998); *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978). As an applicant's negative factors grow more serious, it becomes incumbent upon him to introduce additional offsetting favorable evidence, which in some cases may have to involve unusual or outstanding equities. *Id.*

Based on the record and the Immigration Judge's findings of fact, which are not clearly erroneous, we are not persuaded by the DHS's arguments on appeal. In this regard, we rely in particular the Immigration Judge's factual finding that the respondent has been rehabilitated, in that he has stopped consuming alcohol and does not currently drive (IJ at 11). Furthermore, the Immigration Judge found that the respondent's multiple positive equities—such as a long residence in this country, a steady work history, a history of paying taxes and providing for his family, and the hardship that would befall his qualifying relatives if they are required to relocate—outweigh the negative factor of his criminal history. Although we find this case to be very close given the seriousness of the respondent's convictions, we acknowledge that the respondent has many positive equities in his favor. See *Matter of Mendez*, 21 I&N Dec. 296, 305 (BIA 1996). On the whole, we affirm the Immigration Judge's determination that the positive equities are significant and outstanding enough to offset the serious negative factors of record.

Given our decision in this matter, we will remand this record for the Immigration Judge to complete background checks and other necessary security investigations.

Accordingly, the following orders will be entered.

ORDER: The appeal 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 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