

Falls Church, Virginia 22041

File: (b)(6) – Los Angeles, CA

Date: **FEB 26 2018**

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ravit Rae Halperin

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

The respondent has appealed from the Immigration Judge's March 21, 2017, decision denying his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The respondent's appeal will be sustained, and the record will be remanded for the required background security checks and any further proceedings, as necessary.

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).

There is no issue in this case as to whether the respondent has demonstrated the period of continuous physical presence and good moral character required for cancellation of removal under section 240A(b) of the Act (IJ at 4). The sole issue on appeal is whether the respondent met his burden to show that a qualifying relative will suffer exceptional and extremely unusual hardship if he is removed from the United States. *See* section 240A(b)(1)(D) of the Act.

The evidence reflects that the respondent is a farm laborer who is the sole provider for his four United States citizen children and their mother (IJ at 5; Tr. at 41-43; Ex. 2 at 3).¹ He earns approximately \$(b)(6) weekly (IJ at 3; Tr. at 41).² The Immigration Judge credited the respondent's testimony that he is illiterate and that he has cognitive difficulties at times as the result of a work-related head injury when he was kicked by a horse and rendered unconscious (IJ at 4; Tr. at 29-34; Ex. 2 at 52). The respondent submitted evidence that his eldest daughter is seeking therapy for depression and/or anxiety that stems, in large part, from her father's immigration situation (IJ at 5; Tr. at 37-40; Ex. 2 at 45-48).³

¹ The respondent testified that he is unmarried, but he referred to the mother of his children as his "wife" during testimony and the Immigration Judge's decision does the same.

² *See also* Ex. 2 at 19 (showing a wage of \$(b)(6)/hr. in 2013).

³ We have considered the therapist's report which indicates that the respondent's daughter was also struggling with the sudden death of a young cousin and notes her mother's concern about her behavior after this loss (Ex. 2 at 45).

We conclude that the hardship presented to a qualifying relative, specifically the respondent's United States citizen daughter, was shown to be substantially beyond that which would ordinarily be expected to result from a respondent's removal. *See Matter of Recinas*, 23 I&N Dec. 467, 468 (BIA 2002). In considering the hardship presented, we note that the respondent has been continuously employed as an agricultural worker in this country since 1998, that he has been able to support his four United States citizen children and their mother on his wages, that he has experienced a head injury that has had a lasting effect, and that he is not literate. *See id.* at 471 (stating that the effect of removal on a respondent is considered to the extent that it translates into hardship to a qualifying relative). Citing *Matter of Monreal*, 23 I&N Dec. 56, 64 (BIA 2001), the Immigration Judge concluded that the respondent should not face difficulty in finding employment in Mexico to provide for his United States citizen family members (IJ at 4). However, given the respondent's injury and lack of education, we do not agree with the Immigration Judge's conclusion that the respondent is similarly situated to the applicant in *Matter of Monreal*. We also disagree with the Immigration Judge's conclusion that the respondent's children's mother could work to support the remainder of the family should they remain in the United States; we note that the respondent's wife does not have a legal status that would permit such work (IJ at 5-6; Tr. at 49). *Cf. Matter of Andazola*, 23 I&N Dec. 319, 324 (BIA 2002) (observing that the other parent of a qualifying relative was permitted to work in the United States). While the Immigration Judge did not consider the respondent's daughter's emotional hardship to be exceptional or extremely unusual (IJ at 5), we have considered her treatment in therapy in reviewing the aggregate hardship presented. While it presents a close issue, we conclude that the hardship in this case reaches the level of exceptional and extremely unusual. *See Matter of Recinas*, 23 I&N Dec. at 472 (noting that the degree, rather than type, of hardship may be determinative in a cancellation of removal case). We will therefore sustain the respondent's appeal.

The record reflects that the Immigration Judge found that the respondent merited the limited relief of voluntary departure as a matter of discretion (IJ at 6). On the record before us, we conclude that a discretionary grant of cancellation of removal is also warranted, but we do not foreclose further proceedings on this issue, if necessary. The record will otherwise be remanded so that the necessary background security investigations may be completed.

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).



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