

Falls Church, Virginia 22041

File: (b)(6) - Miami, FL

Date:

APR 13 2018

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Eduardo A. Canal, Esquire

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

The respondent, a native and citizen of Guatemala, has appealed from the Immigration Judge's May 15, 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 Immigration Judge determined that the respondent did not establish the requisite hardship to his qualifying relatives. The appeal will be sustained, and the record will be remanded.

We review the Immigration Judge's findings of fact, including adverse credibility determinations, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). All other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, we review de novo. 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. 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).

We conclude that the hardship the respondent's children would face upon their father's removal would be substantially beyond that which is normally experienced in most cases of removal. See *Matter of Monreal*, 23 I&N Dec. 56, 65 (BIA 2001); see also *Matter of Recinas*, 23 I&N Dec. 467, 472 (BIA 2002). The children's mother died in 2007 and the children depend solely on the respondent for emotional, financial, and physical support (IJ at 4-5; Tr. at 23-24). The children would likely accompany their father to Guatemala in the event of his removal (IJ at 4; Tr. at 34). The respondent speaks Quiche, and he has had no formal education and cannot read or write (Resp. Br. at 2; Tr. at 21). Although the children understand Quiche, it is not clear from the record that they understand or speak Spanish. We conclude that the hardship factors in their totality establish the requisite exceptional and extremely unusual hardship to the respondent's two United States children in this matter. See *Matter of Monreal*, 23 I&N Dec. at 63; see also *Matter of Recinas*, 23 I&N Dec. at 472.

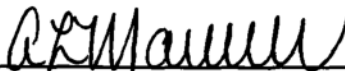
The Immigration Judge explicitly found that the respondent satisfied the remaining statutory requirements for cancellation of removal under section 240A(b)(1) of the Act. Furthermore, we conclude that the respondent merits relief in the exercise of discretion. Accordingly, we will sustain the respondent's appeal and hold that he is eligible for and warrants a grant of cancellation

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of removal. We will 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).



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