

Falls Church, Virginia 22041

File: (b)(6) – Detroit, MI

Date: **APR 26 2018**

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: George P. Mann, Esquire

ON BEHALF OF THE DHS: Theresa Bross
Assistant Chief Counsel

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

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's November 8, 2017, 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 Immigration Judge granted the alternative relief of voluntary departure. The appeal will be sustained, and the record will be remanded.

We review an Immigration Judge's 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 sole issue on appeal is whether the respondent established that his removal would result in exceptional and extremely unusual hardship to his two United States citizen children. See section 240A(b)(1)(D) of the Act. The Immigration Judge determined that the respondent was otherwise statutorily eligible for cancellation of removal (IJ at 9-10). 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).

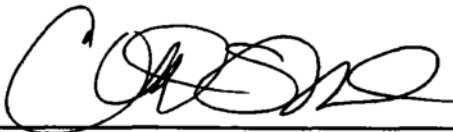
Upon de novo review, we conclude that the respondent, who is the sole provider for his two United States citizen children as well as his longterm partner and her two United States citizen children, has shown the requisite hardship. In addition to the challenges posed by raising and supporting his large family, both of the respondent's children present additional issues. The respondent testified that his family would accompany him to Mexico upon his departure (IJ at 4; Tr. at 38). Thus, they would lose the medical care, paid for by the government, that they currently receive (IJ at 3; Tr. at 33, 54). The respondent's eldest son underwent cranial surgery in 2014 as a toddler in order to correct skull malformation and ensure that his brain would be able to properly grow (IJ at 3, 10; Tr. at 33, 57, 76-77; Exh. 2 at 59). (b)(6) Chief Surgeon of Plastic Surgery of Children's Hospital of (b)(6) explains in a letter that the respondent's son requires regular follow up appointments to verify that his skull continues to grow normally, and to assess any emerging issues (Exh. 2 at 59). (b)(6) further states that the respondent's removal "could

lead to severe emotional and physical health consequences" to his child. Furthermore, the respondent's youngest son has been diagnosed with severe asthma (IJ at 3-4, 10-11; Tr. at 33; Exhs. 3, 5). He has required hospitalization on multiple occasions for several days at a time, including shortly before the merits hearing (IJ at 3-4, 10-11; Tr. at 33-36, 76-77; Exhs. 3, 5).

In light of the evidence regarding these children's special medical needs, we conclude that the hardship the children would face as a result of their father's removal would be substantially beyond that which is typically caused by a parent's removal. *See Matter of Monreal*, 23 I&N Dec. 56, 65 (BIA 2001) (holding that an applicant for cancellation of removal must demonstrate that removal would cause hardship to a qualifying relative that is "substantially different from, or beyond, that which would normally be expected from the deportation of an alien with close family members here"). Accordingly, we will sustain the respondent's appeal and hold that he is eligible for and warrants a grant of cancellation of removal.¹ 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).



FOR THE BOARD

Board Member Roger A. Pauley respectfully dissents. The respondent failed to demonstrate that his children would not receive adequate medical care in Mexico.

¹ In light of our disposition, we need not address the respondent's motion to terminate or administratively close proceedings.