

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6)

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Respondent

FILED

Apr 05, 2024

ON BEHALF OF RESPONDENT: Mabel C. Bejar, Esquire

ON BEHALF OF DHS: Alicia Simpson, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, New York, NY

Before: Liebowitz, Appellate Immigration Judge

LIEBOWITZ, Appellate Immigration Judge

The Department of Homeland Security ("DHS") appeals from the Immigration Judge's January 25, 2021, decision granting the respondent's application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229b(b)(1).¹ The respondent, a native and citizen of Peru, opposes the appeal.² The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

¹ A Notice of Appeal (Form EOIR-26) must be filed within 30 calendar days of an Immigration Judge's oral decision or the mailing of a written decision unless the last day falls on a weekend or legal holiday, in which case the appeal must be received no later than the next business day. 8 C.F.R. § 1003.38(b), (c). The respondent avers that the DHS appeal, filed on March 1, 2021, is untimely. While the Immigration Judge's decision is dated January 25, 2021, a transmittal notice in the record indicates that the decision was served on the parties on January 28, 2021, and, thus, the DHS appeal was timely when filed on March 1, 2021, insofar as the 30-day period from the date the decision was served was on a weekend.

² Among other things, the respondent argues that the DHS appeal should be summarily dismissed for failure to file a brief. However, the Notice of Appeal (Form EOIR-26) submitted by DHS reflects that it did not intend to file a separate written brief or statement. Further, the attachment to the Notice of Appeal meaningfully apprises the Board of reasons underlying the appeal.

The sole issue on appeal is whether the respondent is eligible for cancellation of removal and adjustment to lawful permanent resident status on the basis that his removal would result in "exceptional and extremely unusual hardship" to a United States citizen or permanent-resident qualifying relative. See INA § 240A(b)(1)(D), 8 U.S.C. § 1229b(b)(1)(D). The DHS contests the Immigration Judge's determination that the respondent's removal would cause his qualifying relatives, his United States citizen children, to suffer exceptional and extremely unusual hardship.

We discern no clear error in the Immigration Judge's underlying factual findings. See *Matter of R-S-H*, 23 I&N Dec. 629, 637 (BIA 2003) (explaining the highly deferential nature of clear error review); see also *Matter of D-R*, 25 I&N Dec. 445, 455 (BIA 2011) (citing *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 574 (1985) ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous"). On this particular record and in consideration of the Immigration Judge's detailed written decision, we will uphold the Immigration Judge's determination that the respondent met his burden to establish exceptional and extremely unusual hardships to his qualifying relatives.

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).