

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Respondent

FILED

May 22, 2024

ON BEHALF OF RESPONDENT: John F. Waldron, Esquire

ON BEHALF OF DHS: Bobbi M. Daniels, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: Goodwin, Appellate Immigration Judge; O'Connor, Appellate Immigration Judge;
Crossett, Temporary Appellate Immigration Judge¹

Opinion by Appellate Immigration Judge Goodwin

GOODWIN, Appellate Immigration Judge

The respondent, a native and citizen of Mexico, appeals the January 3, 2024, decision of the Immigration Judge denying his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229b(b)(1). The Department of Homeland Security has filed a motion for summary affirmance. The respondent's appeal will be sustained, and the record will be remanded.

We review findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003(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(d)(3)(ii).

The Immigration Judge denied the respondent's application for cancellation of removal, concluding that the respondent did not demonstrate his removal will result in exceptional and extremely unusual hardship to a qualifying relative (IJ at 5). *See* INA § 240A(b)(1)(D), 8 U.S.C. § 1229b(b)(1)(D). To establish that a qualifying relative will experience exceptional and extremely unusual hardship the respondent must demonstrate that his removal will result in hardship to the qualifying relatives that is "substantially beyond" the hardship ordinarily associated with a person's ordered departure from the United States. *See Matter of J-J-G-*, 27 I&N Dec. 808, 811-15 (BIA 2020).

¹ Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

We find that the Immigration Judge employed an incorrect legal standard in determining that the requisite hardship was not met, requiring that the respondent establish the qualifying relatives “would be deprived of all schooling or of any opportunity to obtain any education at all (IJ at 6).” *See Matter of Monreal*, 23 I&N Dec. 56, 60-61 (BIA 2001) (holding that the hardship need not be unconscionable to meet the standard).

Upon de novo review, we reverse the determination that the respondent did not establish his removal will result in exceptional and extremely unusual hardship to a qualifying relative (IJ at 5-9). The respondent’s qualifying relatives are his four United States citizen children: twin daughters, another daughter, and a son, who were ages 10, 7, and 4, respectively, at the time of the Immigration Judge’s decision (IJ at 2). Should the respondent be ordered removed, the children will go with him to Mexico (IJ at 2-3).

The respondent’s departure from the United States will cause his qualifying relatives to experience hardships “substantially beyond” the ordinary hardship associated with a person’s ordered departure from the United States. *Matter of Monreal*, 23 I&N Dec. at 62. The respondent has sole custody of his children because their mother is a drug addict (IJ at 8-9). She has supervised visitation only and is not compliant with a Child Protective Services reunification plan, making no effort to be reunited with the children (*Id.*). The respondent is a single parent and is the sole financial provider to his four young children (*Id.*). The twins have ADHD and learning disabilities, one has a speech impairment and intellectual disability for which she receives special education and “numerous accommodations,” and the other has a developmental speech disorder (IJ at 3-4). Both are in the fourth grade but are working at a second-grade level (IJ at 4).

We conclude that the significant learning and intellectual disabilities of the respondent’s twins, considered together with the reduced educational opportunities—specifically special education accommodations—and the continuing emotional impact of the children being separated from their mother, along with reduced economic support, will make adjustment to life in Mexico significantly challenging and “substantially beyond” that which would ordinarily be expected to result from an individual’s removal from the United States. *See Matter of Recinas*, 23 I&N Dec. 467, 471-73 (BIA 2002) (relevant factors are considered cumulatively). Considering all the above factors cumulatively, the respondent established, under the appropriate legal standard, that the requisite hardship level has been met.

Having concluded that the respondent has met each of the statutory elements for cancellation of removal, we will remand for the Immigration Judge to determine in the first instance whether the respondent established that a grant of that relief is warranted in the exercise of discretion.² In making this determination, the Immigration Judge should make sufficient findings of fact and weigh the totality of the favorable and adverse factors presented to decide whether “on balance, the ‘totality of the evidence []’ indicates that ‘the respondent has adequately demonstrated that he warrants a favorable exercise of discretion.’” *Matter of Sotelo*, 23 I&N Dec. 201, 204 (BIA 2001)

² The Immigration Judge elected not to reach the issue of discretion below given the determination that the respondent did not establish the requisite hardship (IJ at 9).

(quoting *Matter of C-V-T-*, 22 I&N Dec. 7, 10 (BIA 1998)); *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978).

The parties should be permitted to supplement the record with additional evidence in the remanded proceedings. In remanding, we express no opinion on the ultimate outcome of these proceedings. See *Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996).

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.