

Falls Church, Virginia 22041

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Date: **MAR 30 2020**

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Marilyn Labrada Dume, Esquire

APPLICATION: Cancellation of removal for non-permanent residents; continuance

The respondents¹, natives and citizens of Ecuador, appeal the Immigration Judge's March 12, 2018, decision denying their application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). The respondents also appeal the Immigration Judge's denial of a continuance to obtain additional supporting documentation. The Department of Homeland Security has not filed an opposition. The appeal will be sustained, the respondents will be found eligible for cancellation of removal, and the record will be remanded to the Immigration Judge for any necessary background and security investigations.

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 the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found that the respondents met the requirements for continuous physical presence, good moral character, and have no disqualifying criminal convictions (IJ at 4). The sole basis for the denial was that the respondents had not shown that their United States citizen son or daughter would suffer exceptional and extremely unusual hardship (IJ at 4-6).

The Immigration Judge considered hardship to the respondents' 3 United States citizen children. The Immigration Judge recognized that 2 of the respondents' children have serious health issues (IJ at 4-5). The respondents' son, who was 11 years old at the time of the individual hearing, has autism—he is mostly nonverbal and communicates through word approximations, facial expressions, gestures, and pictures (IJ at 5; Exh. 10 at 207). The son's attending pediatric neurologist states in his neurological report that he is very aggressive, cannot speak or make eye contact, and struggles with transitions (Tr. at 33-34; Exh. 10 at 308). The co-respondent testified that their son receives individualized language therapy, behavioral support, and occupational therapy at his school, and that he will not be able to live independently as an adult (Tr. at 32; Exh. 10 at 298).

¹ The respondents are a wife and husband. The wife will be referred to as the "lead respondent" and the husband as the "co-respondent."

The respondents' daughter, who was 7 months old at the time of the hearing, is fully deaf in one ear and partially deaf in the other (IJ at 5). The respondents' daughter was fitted for hearing aids, has to be provided with audiology services 2 times a month, and is given physical and language therapy at her home (Tr. at 37; Exh. 7 at 31-44, 48). The co-respondent additionally testified that their daughter will eventually need to have "transplant surgery" on her ears (Tr. at 37). The respondents testified that all of their children would accompany them to Ecuador if they are removed (Tr. at 37-38).

In denying their application for relief, the Immigration Judge determined that the respondents did not meet their burden of proof to show that their qualifying relatives could not receive continual and adequate medical care in Ecuador, nor did they establish that educational opportunities would be limited for their children in that country, and therefore did not establish that a qualifying relative would suffer exceptional and extremely unusual hardship. However, upon our de novo review, we conclude that, given the facts of this specific case, even an interruption to the respondents' children's continued care constitutes hardship that is "substantially different from, or beyond, that which would normally be expected from the deportation of an alien with close family members here," especially considering that the respondents' son has serious difficulty with transitions and that both children continue to require regular therapy. *Matter of Monreal*, 23 I&N Dec. 56, 65 (BIA 2001).

In light of the factors discussed above, and given the Immigration Judge's positive discretionary determination, we also conclude that the respondents warrant cancellation of removal (IJ at 6). Because the respondents are eligible for and deserving of the relief sought, we will sustain the appeal. We will remand the matter to allow the Department of Homeland Security to complete the necessary background checks.²

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The respondents are eligible for, and merit, cancellation of removal under section 240A(b)(1) of the Act.

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

² As we determine that the respondents are statutorily eligible for cancellation of removal, we need not discuss the Immigration Judge's denial of the respondents' request for a continuance.